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AND RELATED INTOLERANCE

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# REPORTS, STUDIES AND OTHER DOCUMENTATION FOR THE PREPARATORY COMMITTEE AND THE WORLD CONFERENCE

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the Preparatory Committee the study entitled "Racial discrimination and religious discrimination: identification and measures", prepared by Mr. Abdelfattah Amor, Special Rapporteur of the Commission on Human Rights on religious intolerance, in accordance with Commission resolution 1999/78.

Annex

## Racial discrimination and religious discrimination: identification and measures

Study prepared by Mr. Abdelfattah Amor, Special Rapporteur
on religious intolerance

CONTENTS

| | Paragraphs | Page |
|---|---|---|
| Introduction | 1 - 7 | 4 |
| I. LEGAL ASPECTS OF AGGRAVATED DISCRIMINATION | 8 - 72 | 5 |
| A. Context | 9 - 19 | 5 |
| B. Universal protection against aggravated discrimination | 20 - 64 | 7 |
| 1. General instruments | 21 - 38 | 7 |
| 2. Specific instruments | 39 - 64 | 11 |
| C. Regional protection | 65 - 72 | 18 |
| II. FACTUAL ASPECTS OF AGGRAVATED DISCRIMINATION | 73 - 125 | 21 |
| A. Tentative system of classification | 74 - 116 | 21 |
| 1. Discrimination involving a majority and persons or groups forming an ethnic or religious minority | 85 - 110 | 23 |
| 2. Discrimination involving persons belonging to different ethnic and religious minorities or groups | 111 - 116 | 29 |
| B. Evaluation of content and scope | 117 - 125 | 31 |
| III. CONCLUSIONS AND RECOMMENDATIONS | 126 - 152 | 33 |
| A. Strengthening protection against aggravated discrimination | 133 - 143 | 35 |
| 1. International protection | 133 - 139 | 35 |
| 2. Internal protection | 140 - 143 | 36 |

CONTENTS (continued)

| | Paragraphs | Page |
|---|---|---|
| B. Prevention of aggravated discrimination | 144 - 152 | 37 |
| 1. Education and training | 145 - 147 | 37 |
| 2. Information and communication | 148 - 149 | 38 |
| 3. Dialogue between and within faiths and ethnic groups | 150 | 39 |
| 4. Town planning policies | 151 | 40 |
| 5. Democracy and development | 152 | 40 |

Appendix

Bibliographical references ........ 56

## Introduction

1. There are over 7,500 ethnic groups and "minoritized" communities, 6,700 languages and countless religions and beliefs in the world today, spread over the five continents and the 185 States Members of the United Nations [Yacoub, 1998].[1] To this figure, which shows the great richness of our planet, should be added a second, disturbing, figure. According to certain sources (already somewhat dated), 2.2 billion people are the victims of discrimination or restrictions on the basis of their freedom of thought, conscience, religion or belief or their ethnic identity [Odio-Benito, 1989].[2]

2. At the dawn of the twenty-first century, the state of international society is certainly paradoxical. While it is definitely much more closely integrated, it has never ceased to be in conflict. The old world order has been replaced by new local conflicts in which political and economic factors cut across historical, religious, ethnic or nationalistic lines. International society is faced with new situations: the divisions are far less clear-cut and the conflicts, ever more scattered and sometimes difficult to comprehend, target people's integrity, identity, freedom and humanity.

3. The elimination of all forms of discrimination, as an integral part of the international protection of human rights, has consequently become one of the most urgent imperatives in the world today. The formation or break-up of States, territorial divisions, voluntary or forced migrations, or simply economic and social conditions, religious and political extremism, the negative role of the media and prejudice are all likely to heighten tensions, particularly ethnic and/or religious tensions. After lying dormant for a long time, they resurface, sometimes violently but often in a more diffuse and destructive way. Many population groups have been minoritized. Peaceful, or at least conflict-free, coexistence among the various communities is jeopardized. Economic development imperatives are disrupted, delayed or called into question. The threats to domestic and international peace and security are, more than ever, interdependent.

4. This explains why the international community, particularly the United Nations system, has gone to such lengths to establish rules and set up mechanisms specifically to deal with racial and religious discrimination, while taking into account as far as possible the requirements of State sovereignty and the constraints of providing increased protection for human rights and fundamental freedoms.[3]

5. However, if these rules and mechanisms are studied together with discrimination as it is practised throughout the world, the distinctions between racial and religious categories, or even between commonly-used concepts or terms, are not clear, whether the subject is minorities [Yacoub, 1998][4] or religion.[5]

6. There are borderline cases where racial and religious distinctions are far from clear-cut. Apart from any discrimination, the identity of many minorities, or even large groups of people, is defined by both racial and religious aspects. Hence, many instances of discrimination are aggravated by the effects of multiple identities. Moreover, the right to freedom of religion is an essential human right, just like the right to belong to an ethnic group or to a minority. When both of these rights are infringed in the case of a single person or group of persons, the violation

is not just a superimposition or ordinary addition of offences. The combination of the two offences creates a new, more serious offence which, while of varying intensity, is by its very nature a separate concept.

7. Because of their specific characteristics, these situations, which can be referred to as the aggravated intersection or meeting points of race and religion, require a legal analysis (chap. I) and a factual approach based on the way in which such discrimination is practised (chap. II), before the solutions and recommendations that seem to us appropriate to these meeting points are considered (chap. III).

## I. LEGAL ASPECTS OF AGGRAVATED DISCRIMINATION

8. The law seems to offer separate protection against the two types of discrimination. This study will initially aim to show that, even from a legal viewpoint, racial discrimination and religious discrimination overlap, sometimes to a large extent; religious identity is an integral part of racial identity and vice versa. The concept of minority, in particular, makes it possible to bring the two together and consequently put the problem into context (sect. A). It will then highlight the shortcomings of existing texts and mechanisms and identify in these texts a possible legal basis for racial discrimination aggravated by religious discrimination. We will essentially be dealing with universally applicable international instruments (sect. B), and will then consider regional instruments (sect. C).[6]

### A. Context

9. A person who is a victim of discrimination based on religion or belief - within the meaning of articles 1 and 2 of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 25 November 1981 - may be subjected to aggravated discrimination if he or she belongs to a readily identifiable group of people.

10. Many cases of discrimination, in which only the person's religion or belief is targeted, are beyond the scope of this study.[7] It is only when the person concerned is ethnically different from the majority or from other minorities or ethnic or religious groups or from ethnic groups of the same minority that he or she can claim aggravated racial discrimination.[8]

11. It must be acknowledged, however, that the distinctions in this area are not as straightforward as they might appear at first glance. Some religions belong to a particular category in which worship, practices, rites, beliefs or even the written and spoken language developed for religious purposes are an essential element of their identity and, sometimes, their ethnicity [Eide, E/CN.4/Sub.2/1992/37, para. 93].[9]

12. Consequently, the concept of the minority is, at least essentially, the cardinal point, or the node where race and religion intersect. This means that aggravated discrimination will necessarily be discrimination against a person belonging, if not to a minority, then at least to an identifiable group of people [Robert, 1994].[10] However, there still appear to be some difficulties in defining minorities, particularly religious minorities, despite the fact that the latter were historically the first to be concerned by the protection of minorities and, more generally, human rights.

13. However, as Francesco Capotorti, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, rightly observed in his famous 1979 study: "If, however, the problem is examined without political prejudice and from a truly universal point of view, there can be no gainsaying that the essential elements of the concept of a minority are well known, and that the only point at issue as far as the definition is concerned is whether an indisputable objective 'core' can be widened or restricted by means of a few controversial considerations" [E/CN.4/Sub.2/384/Rev.1, para. 564].[11]

14. Several definitions of minority have been proposed around this core; most of them use cumulative criteria of an objective and subjective nature. Capotorti's definition is particularly interesting; according to it, a minority is "a group numerically inferior to the rest of the population of a State, in a non-dominant position, whose members - being nationals of the State - possess ethnic, religious or linguistic characteristics differing from those of the rest of the population and show, if only implicitly, a sense of solidarity, directed towards preserving their culture, traditions, religion or language" [E/CN.4/Sub.2/384/Rev.1, para. 568].

15. Other experts, generally members of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, have proposed similar definitions. Worthy of mention are those by Jules Deschênes in 1985 [E/CN.4/Sub.2/1985/31],[12] Asbjørn Eide in 1994[13] and Stanislav Tchernichenko in 1997 [cited in Yacoub, 1998].[14] Mention should also be made of the definition of the Permanent Court of International Justice in its advisory opinion of 31 July 1930, from which the definitions of the above-mentioned legal writers seem to be drawn ["The Greco-Bulgarian 'communities'"].[15] None of these definitions has been found to be satisfactory [Andrysek, 1989],[16] which has much less to do with the appropriateness of the definitions proposed than with obstacles of a political or even psychological nature and to an unjustified fear of the risks of separatism.

16. International law habitually protects rights without requiring general agreement on a definition of the beneficiaries of the protection. The best example of this is the right of peoples to self-determination. The lack of a definition in the international conventions where the term "minority" is used (including article 27 of the International Covenant on Civil and Political Rights and article 14 of the European Convention on Human Rights) has not prevented the bodies set up under these conventions from settling disputes involving minorities. In any case, the criteria proposed overlap considerably. The subjective criteria (sense of solidarity and determination to preserve their distinctive religious and cultural characteristics) are implicit in the objective criteria (existence of a group or a community that is distinct and non-dominant in numerical terms, having common ethnic and religious characteristics). In other words, such a definition, even if not enshrined in positive law,[17] can easily be applied to persons belonging to religious minorities who suffer from racial discrimination.

17. The minorities we are studying here, the "national" or "identity" minorities - as distinct from other minorities based on other criteria (homosexual, vegetarian, disabled, political, etc., who are not covered by international conventions) - are generally divided into three categories: ethnic, religious and linguistic; international instruments dealing specifically with minorities agree on these three criteria [Malinverni, 1991].[18] However, these three categories or criteria are far from mutually exclusive. For our purposes, several religious minorities are at the same time ethnic and/or linguistic minorities. These differences from the rest of the population normally

have an impact on their culture and way of life.[19] Constitutions throughout the world provide protection for minorities using a wide variety of terminology that captures the conceptual difficulty of distinguishing between the racial and the religious dimensions of the concept.[20]

18. Finally, as we shall see, aggravated discrimination does not concern minorities exclusively. Groups of people who differ in their religion or ethnic origin from the majority of the population or other groups can be the target of aggravated discrimination even though they may not satisfy all the criteria for the definition of a minority, either for objective reasons (for example, they are not linked by nationality to the State in whose territory they reside) or for subjective reasons (the group has little or no sense of solidarity or of preserving its specific characteristics).

19. The question, therefore, is whether this interconnection of religion and race is legally established in the universally applicable international instruments.

## B. Universal protection against aggravated discrimination

20. Two categories of instruments can be distinguished: those of a general nature dealing with the protection of human rights and those of a specific nature dealing with a particular category of rights to be protected. The type of instrument (convention, declaration) and its relevance to the problem concerning us are variable. However, none of these instruments envisages the hypothesis of aggravated discrimination by singling it out from other forms of discrimination for special legal treatment. Moreover - and this may be the reason why - none of the instruments studied claims to protect minorities as such. They are aimed only at the people belonging to minorities. However, this statement should be qualified. None of the instruments studied looks unfavourably on the intersection between race and religion. Some even make explicit reference to it.

### 1. General instruments

#### (a) The Charter of the United Nations and the Universal Declaration of Human Rights

21. Unlike the League of Nations Covenant, the Charter of the United Nations affirms "respect for human rights and for fundamental freedoms for all". Identical wording is used: "...without distinction as to race, sex, language, or religion" (see art. 1, para. 3; art. 13, para. 1 (b); art. 55 (c); and art. 76 (c)), [21] even though the Charter is not aimed especially at the protection of minorities. This approach is perfectly understandable insofar as the sought-after objective of universality requires the assertion of principles intended for application everywhere, independently of the particular situation of a category of rights to be protected or particular problems in a given region of the world; it is the interpretation of a given principle that makes it possible to consider its application to a particular category of rights to be protected.

22. In this respect, the Charter's contribution is important:

(a) First of all, it established the principle of non-discrimination and equality, the fundamental legal basis for the protection of every group or minority, including the persons we are concerned with, the victims of aggravated discrimination;

(b) It integrated this principle into the framework of the international protection of fundamental human rights (see preambular paragraph 2 and article 1, paragraph 3), in such a way as to make States responsible not only for the negative obligations of non-discriminatory treatment but also specifically for the protection of the persons concerned. Developments in legislation on the subject have shown that giving priority to human rights, far from overshadowing the rights of groups, has, on the contrary, integrated them. Protection of minorities and groups against discrimination, including aggravated discrimination, is now an integral part of international human rights protection, which should resolve the apparent contradiction between the need to preserve the identity of minority groups and the need to preserve the integrity of the State [Malinverni, 1991; de Witte, 1991].[22]

23. Moreover, all the instruments relating to minorities stipulate that protection of minorities must not be incompatible with the fundamental principles of international law, including the sovereignty, integrity and political independence of States.[23]

24. As far as the question before us is concerned, the Universal Declaration of Human Rights of 10 December 1948 goes into more detail than the Charter of the United Nations:

(a) First of all, although the Declaration is not aimed directly at the rights of persons belonging to ethnic and religious minorities, the use of general terms in article 2, paragraph 1 ("... or other opinion ... or other status") means that it can cover racial discrimination aggravated by religious discrimination;

(b) With regard to religious discrimination, article 18 of the Declaration serves as an effective reference point and in fact was the basis for all subsequent texts. For the moment, we can focus on three important elements:

(i) Freedom of religion also includes the freedom to change religion;

(ii) This freedom is not restricted to religion proper, but also covers freedom of belief and

(iii) It includes the freedom to manifest or not to manifest one's religion or belief.

(b) The International Covenants of 1966

25. The International Covenants on Human Rights of 16 December 1966 were, qualitatively speaking, a major step forward. The International Covenant on Civil and Political Rights, in particular, contains a large number of relevant provisions,[24] whose scope has been clarified and enriched by the decisions and observations of the Human Rights Committee. If these provisions are analysed separately and together, the grounds for a right to be free of aggravated discrimination can be deduced both from the combination of the concepts employed in the Covenant and from their implementation.

### (i) Conceptual combination

26. As observed by the Human Rights Committee in its General Comment 18 of 4 September 1992, the Covenant does not contain a definition of the term “discrimination” and does not indicate what constitutes discrimination within the terms of its various provisions, particularly article 2, paragraph 1.[25] In the same General Comment, the Committee introduces a number of elements that could help to shape the conceptual outline of the issue under study: it refers explicitly to the definition of discrimination contained in the International Convention on the Elimination of All Forms of Racial Discrimination of 1965 and therefore gives the impression that “discrimination” as used in the International Covenant on Civil and Political Rights should be understood as having a similar meaning.[26] While pointing out that the enjoyment of rights and freedoms on an equal footing does not mean identical treatment in every instance, the Committee takes a broad view of the right to non-discrimination which covers all forms of discrimination, even those relating to rights that are not explicitly recognized in the Covenant.[27] It is precisely when the rights are recognized by the Covenant and when they are violated in an aggravated way because of the implications of the identification with multiple groups of persons belonging to minorities that, on a strictly legal level, the discrimination cannot be treated in exactly the same way as either discrimination affecting a right that is not recognized by the Covenant or discrimination affecting a right protected by the Covenant but constituting, as it were, a single “violation”.

27. Two of the Covenant’s provisions are especially concerned with the groups and minorities we are dealing with: article 18 and article 27.

### Article 18

28. This article draws heavily on article 18 of the Universal Declaration of Human Rights of 1948, providing for freedom of religion and - although it is less explicit on this point than the article in the Declaration - freedom to change religion. It is impossible to find a satisfactory definition of a “protected religion” because of the significant functional differences between the various systems followed. The Covenant seems to take this problem into account by providing - like the Universal Declaration - for a broad acceptance of the concept. Thus, the scope of the article seems to cover every system of belief and practice based on a relationship with a supreme being, one or more deities or spiritual beings, sacred things or simply the universe.

29. Religion, however, is distinctly more complex: it differs from other manifestations of opinion or belief in that it cannot be reduced to a question of personal conviction, i.e. to a simple question of freedom of conscience or belief. As several authors have pointed out, religions are systems of beliefs and practices, myths, rites and worship that have the effect of uniting members of a group and ensuring the group’s existence and often even its ethnic identity [Yacoub, 1998; Ben Achour, 1994].[28] Although religions have been the cause of the bloodiest wars, they have also safeguarded the identity of several peoples. Catholicism has done this for the Polish and the Irish; Orthodox Christianity for the Bulgarians, Greeks and Serbs; Judaism for the Israelis and Jewish minorities across the world; Islam for the Pakistanis, Bosnians, Kosovars and the many Muslims in the West; and many traditional polytheistic religions have done the same in Africa and Asia and for the indigenous people of the Pacific region and the Americas. As a result, religious status is often difficult to dissociate from the cohesion of a social group in terms of its

identity or ethnic origin and largely covers minority status [Ben Achour, 1994].[29] Discrimination, measures of intolerance and xenophobic practices cannot be defined or dealt with separately. The discrimination is aggravated because it is difficult in some instances to dissociate ethnic aspects from religious aspects.

Article 27

30. This article is aimed directly at minorities and is worth citing in full:

> "In those States in which ethnic, religious or linguistic minorities exist, persons belonging to such minorities shall not be denied the right, in community with the other members of their group, to enjoy their own culture, to profess and practise their own religion, or to use their own language."

Several authors have written on this article [Capotorti, 1991; Fenet and Soulier, 1989; Rousso-Lenoir, 1994; Duffar, 1995].[30] The many problems posed by this article are well known, particularly with regard to its relevance to article 18 of the Covenant,[31] the interpretation of the phrase "In those States in which ... minorities exist"[32] and the question of who is entitled to the rights guaranteed.[33] Article 27 applies to persons who suffer from aggravated discrimination, because the latter does not concern "an isolated individual" but a person belonging to a group of people ethnically distinct from the majority or from other minorities. The phrase "ethnic, religious or linguistic minorities" deserves further consideration with regard to the issue with which we are concerned.

31. The use of the expression "ethnic minorities" is not accidental. The genesis of this article reveals that the word "ethnic" replaced the word "racial". Mr. Capotorti sums up perfectly the justification for this change: "... so-called racial groupings were not based upon scientific facts and tended to become indistinct as a result of evolutionary processes, intermarriage, and changes in ideas or beliefs ... the word 'ethnic' seemed to be more appropriate, as it referred to all biological, cultural and historical characteristics, whereas 'racial' referred only to inherited physical characteristics" [E/CN.4/Sub.2/384/Rev.1, para. 197].[34]

32. These observations need no further comment. Suffice it to say that the drafters of article 27 of the Covenant eventually retained the broadest category able to encompass all the others, including the one differentiated by assumed or real genetic characteristics.

33. However, the problem is not a straightforward one. It becomes more complicated when one tries to define the broad category of "ethnic group". An ethnic group (ethnos in Greek, that is, "people") is a sociological category. It is defined by sociologists as "a community defined ... by the existence of one or more common characteristics, such as language, religion, tribal origin, nationality or race, and by the fact that its members share the same sense of identity" [Stavenhagen, 1991; Breton, 1992].[35] This means that the ethnic group, as a sociological category, largely covers the legal concept of ethnic minority or, indeed, minority in general. Religion is one of the factors, sometimes a major factor, in distinguishing between the two concepts, as in both cases religion contributes to forging the group identity. This raises doubts about the advantages of distinguishing between the different kinds of minorities.

34. One may wonder whether the word "minority" is not sufficient on its own, as a minority is distinguished from the majority (or from other minorities) precisely by characteristics used in the very definition of the concept (see, for example, Capotorti's definition, quoted in paragraph 14 above) - and of ethnic group, for that matter - and consequently do not constitute distinct categories.

35. In fact, the distinction made in article 27 is fully justified. A minority could be solely a linguistic minority, or solely a racial one (in the physical sense of the word), while sharing a language and religion with the majority. Often, however, the characteristics of minorities, particularly ethnic (in the sociological sense) and religious minorities, overlap and combine. Religion helps to define the ethnicity, which is expressed through religion and language.

36. The result - although the International Covenant on Civil and Political Rights does not take it to its logical conclusion - is that discrimination is all the more aggravated because it is so difficult to determine which of the two co-existing characteristics is targeted by the person guilty of discrimination.

### (ii) Implementation of the concepts

37. The interpretation of article 2, paragraph 1 (non-discrimination clause), and article 26 (equality before the law and equal protection of the law) has allowed the United Nations Human Rights Committee to extend the scope of the Covenant considerably and to build up a body of bold decisions on the right to non-discrimination. The non-recognition of a right by the Covenant has had no negative effects on the applicability of article 26 or on the Committee's competence in this area.[36] It is this kind of bold interpretation that can be envisaged in relation to aggravated discrimination. It is for the Committee to exploit all the possibilities of the Covenant in this respect. This is all the more conceivable as several provisions of the Covenant are violated in the case at hand:

(a) The general non-discrimination clause (art. 2, para. 1);

(b) The principle of freedom of religion or belief as specified in article 18;

(c) The rights enjoyed by persons belonging to ethnic and religious minorities under article 27.

38. In fact, contrary to the assumption of article 26, it is not a question of a right to non-discrimination in relation to a new right not provided for in the Covenant, but of rights asserted in several provisions of the Covenant resulting from identification with multiple (religious and ethnic) groups. The notion of aggravated discrimination appears to us to be a necessary logical progression.[37]

## 2. Specific instruments

39. Since the United Nations came into being, a considerable number of instruments have been adopted in order to eliminate discrimination in a wide range of areas or to protect certain groups. Some are of particular interest and deal directly with the subject of our study. Others,

modelled on the Charter of the United Nations and the 1948 Universal Declaration of Human Rights, are of relatively minor interest although their general spirit is far from unfavourable to the overlap between race and religion.

(a) Explicit recognition

(i) Instruments protecting groups

40. The Convention on the Prevention and Punishment of the Crime of Genocide, adopted on 9 December 1948, is of essential importance to our work. Article II of the Convention defines genocide as an act committed "with intent to destroy, in whole or in part, a national, ethnical, racial or religious group, as such". Article 4 of the Statute of the International Criminal Tribunal for the Former Yugoslavia, established on 22 February 1993, and article 6 of the Statute of the International Criminal Court, adopted in Rome on 17 July 1998, reproduce this definition.[38] It is obvious that the crime of genocide may crystallize the overlap between race and religion in the most "odious" way (Convention, third preambular paragraph). Unlike crimes against humanity, genocide, even if perpetrated against individuals, aims at destroying the very foundations of a human entity or ethnic and religious group.[39] "[...] genocide [...] is a crime under international law" (Convention, art. I); it "shocks the conscience of mankind, results in great losses to humanity [...] and is contrary to moral law and to the spirit and aims of the United Nations".[40] History has shown that when genocide is perpetrated, it is aimed at a group's total identity, i.e. at causing it bodily or mental harm (Convention, art. II (b)). The word "mental" reflects in itself the most criminal form of aggravated discrimination. The episodes of "ethnic cleansing" committed throughout the history of humanity were intended to harm both the racial, religious and cultural identity of a group or people, at times its very physical existence. It is therefore not possible to dissociate them.

41. Developments in the concept of the crime of genocide as reflected in the recent case law of the International Criminal Tribunal for the Former Yugoslavia deserve a few comments in connection with the subject at hand. Three elements must occur together in order for genocide to exist:[41]

(a) A material element, in the form of the criminal acts listed in the above-mentioned instruments;

(b) A moral element: an "intent to destroy, in whole or in part, a group [...] as such";

(c) An element ratione personae: genocide must be aimed at a "national, ethnical, racial or religious"[42] group.

42. As far as the subject of our study is concerned, the problem arises in cross-interpreting these elements, which is not as easy as it might appear. The crime of genocide remains an ambiguous concept [Verhoeven, 1991; Castillo, 1994].[43] And it is precisely this ambiguity that requires an attentive analysis, making due allowances, with regard to aggravated discrimination. First, as regards the material element, the relevant instruments on genocide address, in principle,

harm to persons exclusively, rather than harm to property. So-called cultural genocide, or ethnocide, i.e. genocide aimed at destroying the language, religion or culture of a group, does not appear to be taken into consideration, despite the fact that it might be the most intense manifestation of the crime of genocide.[44]

43. The International Criminal Tribunal for the Former Yugoslavia makes no reference to the concept of "cultural genocide" anywhere in the definition of genocide contained in article 4 of its Statute, or in its characterizations or interpretations of the crime of genocide. There is nevertheless a feeling that the idea is taking hold in the Karadzic and Mladic case where the Tribunal makes several references to it: the bill of indictment[45] speaks of physical, political, legal and cultural genocide (note 58, p. 21, para. 44), systematic destruction of sacred sites (p. 6, para. 11), the virtually systematic destruction of Muslim and Catholic cultural property (p. 8, para. 15) and the desire to annihilate religious services and rites (p. 19, para. 41). The Tribunal even refers to the killing of memory and a policy of ethnic cleansing aimed at eradicating memory (p. 61, para. 94; p. 35, para. 60). The Tribunal also states that the widespread and systematic destruction of houses of worship destroyed, traumatized or dehumanized most aspects of life in the Bosnian Muslim and Croat communities in the regions over which the Bosnian Serbs gained control (p. 9, paras. 30 and 31).

44. This is in no way an attempt to place aggravated discrimination, the subject of our study, on the same footing as cultural genocide. In any event, the possibility of exclusively cultural destruction remains an exception. As Verhoeven notes, "in many cases, ethnocide is merely the 'cultural' aspect of genocide proper, which should suffice in order for it to be punished".[46] However, when it is repetitive and, of course, reaches a certain magnitude, aggravated discrimination, whether by the State or individuals,[47] borders on cultural genocide or genocide proper. In any event, even if the comparison is considered to be inappropriate and unjustified, this is all the more reason why such discrimination cannot be given the same treatment as discrimination on separate grounds. It may rightfully be argued that genocide requires an intent to commit genocide on the part of the perpetrator. Here, too, the problem is far from simple, and the solution proposed confirms the idea of a special regime for governing, on a common sense basis, discrimination against persons identified with more than one group.

45. There can be no genocide without the "intent to destroy, in whole or in part, a group [...] as such". As H. Donnedieu de Vabres has noted, "the theory of genocide [...] is therefore a derogation from ordinary law, because it encompasses the motive in the legal constitution of the offence".[48] The problem is whether the intent to commit genocide is sufficient, or whether a quantitative threshold is also required in order for the elements constituting the offence to be present. Although it is true that the relevant instruments set no quantitative threshold, the concept of group appears to be an integral part of the definition of genocide.[49] The very nature of the crime implies the will to destroy a significant proportion of the group [Whitaker, 1985; Ternon, 1995].[50]

46. However, the opposite argument can also be made. In a system where intent plays a decisive role, "What matters" - as Verhoeven writes[51] - "is the perpetrator of the crime rather than the number of victims". As the decisive factor is the intent to destroy a group in whole or in part, the number of victims is not an element constituting the offence [Verhoeven, 1991].[52] Consequently, there is nothing to prohibit a crime being characterized as genocide, even if it has

resulted in only a single victim, or at any rate very few victims [Verhoeven, 1991; Glaser, 1970; Planzer, 1956].[53] This argument is a bold one. It maintains that aggravated discrimination directed against a single person or a small number of persons belonging to a minority or an ethnic or religious group can indeed have a genocidal aspect, provided that there is a proved and well-founded intent on the part of its perpetrator to use the person or persons in question to arrive at the destruction of the group or minority as such.

47. This argument is far from whimsical and should be taken very seriously[54] as a faithful interpretation of the relevant instruments shows that what is required is not the destruction in whole or in part of a group, but "the intent to destroy, in whole or in part, a group [...] as such". Of course, such an intent will be difficult to prove. In practice, however, genocidal intent can often be proved through the material element. Genocide is usually expressed through acts (killings, disappearances, massacres, deportations, measures intended to prevent births within a group, rape, etc.) committed on so vast and so serious a scale as to make it possible to infer their perpetrators' intent.

48. This is what the judgements of the International Criminal Tribunal for the Former Yugoslavia appear to indicate: in the Nikolic case,[55] the Tribunal does not refer to a number of victims in particular, but cites the magnitude of the "ethnic cleansing" conducted in the Vlasenica region; it indicates, precisely, that intent may be linked to the acts which fall within the purview of the "ethnic cleansing" policy being conducted in the region, and may generally be inferred from this policy. The Tribunal states as follows:

> "The record shows that the discriminatory policy introduced at Vlasenica, which formed the backdrop for the acts committed by Dragan Nikolic, was aimed more particularly at 'cleansing' the region of its Muslim population. In the case at hand, this 'ethnic cleansing' policy took the form of extremely serious acts of discrimination, which would tend to indicate that it was of a genocidal nature."[56]

49. Similarly, in the Karadzic and Mladic case, the Tribunal notes the link between the massively destructive effects of the acts before it and genocidal intent.[57] In this case the judges tend to regard intent as taking precedence over the number of victims: "the mere number of victims selected solely because of their membership in a group" could indicate genocidal intent.[58] In other cases, the Tribunal develops the same argument of the causal link between "planned ethnic cleansing" or "the serious nature of the ethnic cleansing involved" and "genocidal intent" (Vukovar hospital and Srebrenica cases.[59] However, in the Karadzic and Mladic case, the Tribunal develops the idea that genocidal intent may be either explicit or implicit.[60] It may even be inferred from acts which would not necessarily be listed in article 4, paragraph 2 of its Statute.[61] For example, the judges have regarded the transmission of a new ethnic identity to a child through forced conception or even the destruction of mosques, Catholic churches or libraries as possibly constituting an attack on the group's foundations. Such discriminatory acts must, however, be part of a general philosophy underlying a political project aimed at attacking, through the repetitive nature of the acts, the group's very foundations.[62] Hence, as said earlier, "ethnocide" or "cultural genocide" was not excluded from the judges' reasoning, despite the fact that the human rights treaties seem to accord a narrow meaning to acts constituting the crime of genocide.

50. Finally, genocide must be aimed at a group, qualified by the relevant instruments as "national, ethnical, racial or religious". Although it is known who is excluded, none of the texts defines which groups should enjoy protection.[63] Although certain authors regard each of these concepts as having a different meaning [Glaser, 1970],[64] it is difficult, as we have said, to distinguish definite boundaries between them [Verhoeven, 1991].[65] Here, too, the case law of the International Criminal Tribunal for the Former Yugoslavia is instructive for the purposes of our study.

51. First, the lack of precise boundaries does not seem to have caused the Tribunal any difficulty, which confirms the above-mentioned idea that international law habitually protects, in the absence of a general agreement as to the beneficiaries of protection. Next, it has to be noted that there are terminological variations in the concepts used, although some preference is shown for certain of them. For example, the concept of race appears very seldom in the Tribunal's references to the groups subject to the crime of genocide. In the Meakic case, the Tribunal refers to "Bosnian Muslims and Bosnian Croats as national, ethnical, racial [our emphasis] or religious groups".[66] However, in addition to the use of the general expression "ethnic" cleansing, the terms "groups" (Bosnian, Bosnian Croat, Bosnian Muslim national groups)[67] "communities" (Bosnian Muslim and Bosnian Croat communities)[68] and population (Muslim population)[69] are frequently used. The Tribunal does not appear to insist on a formal dividing line between national group and other groups (essentially ethnic and religious). The groups referred to are at times described as national groups (Bosnian, Bosnian Croat, Bosnian Muslim national groups), at times seem to be defined in terms of their religious identity (Muslim communities), and may even be defined in terms of a blend of national and religious aspects (Bosnian Muslim national group). When it refers to this last group, religion even becomes "a nationality", confirming what has been said about the ethnicity of religion. Finally, when it speaks of "ethnic cleansing" the Tribunal is referring to all these groups together, against which genocide has been committed. This approach may stretch the ethnicity criterion to such a point that it encompasses both national and religious, even racial, aspects; unlike the human rights treaties, which seem to make a clear distinction between "national, ethnical, racial or religious group".[70]

52. The goal of this study is ultimately not to show how serious the crime of genocide is, as the concept itself is amply sufficient to do so. For some writers, genocide is even "an aggravated or qualified case of crime against humanity" [Glaser, 1970].[71] The goal of this analysis is found at another level. Our analysis of the constituent elements of the crime of genocide, in particular, but not exclusively, the element of intent, has enabled us to identify an ambiguity, what might even be termed a conceptual and methodological confusion which makes it possible to compare, obviously to a certain extent, genocide with aggravated discrimination, the subject of our study. In any event, between genocide - assuming it had a clear-cut definition - and single forms of discrimination, there would be a considerable number of variations of discrimination with progressive degrees of seriousness, culminating in discrimination which can certainly not be characterized as genocide, but which requires a special regime, because it concerns persons whose group identity is found at the crossroads between religion and race.

(ii) Instruments relating to the elimination of discrimination

53. The instruments relating to the elimination of racial and religious discrimination reflect this overlap and can even provide a solid legal basis for any proceedings in this field. The main instruments which contain relevant provisions are the following:

(a) The United Nations Declaration on the Elimination of All Forms of Racial Discrimination of 20 November 1963;

(b) The International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965;

(c) The Declaration on the Elimination of All Forms of Intolerance and of Discrimination Based on Religion or Belief of 25 November 1981;

(d) The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992.

54. It should be noted at the outset that the very concept of discrimination among human beings - which is not always defined - is strongly condemned in the above-mentioned instruments as being "an affront to human dignity" and "a disavowal of the principles of the Charter of the United Nations" (1963 Declaration, art. 1; 1981 Declaration, art. 3) and because it "is capable of disturbing peace and security among peoples and the harmony of persons living side by side even within one and the same State" (1965 Convention, seventh preambular paragraph). In most of these instruments, there are many points of intersection between race and religion. They are reflected in the definition of discrimination, its magnitude and the measures taken to prevent it.

55. For example, article 3, paragraph 1 of the 1963 Declaration states explicitly that "Particular efforts shall be made to prevent discrimination based on race [...] especially in the fields of [...] religion." Similarly, article 1, paragraph 1 of the 1965 Convention contains a broad definition of the expression "racial discrimination" which is not based exclusively on anatomical criteria (race, colour) but also on "national or ethnic origin" and which has the purpose of undermining equality "in the political, economic, social, cultural or any other field of public life." Religion as a public expression of the life of a nation or social group may be included in these fields. Article 5 of the 1965 Convention confirms, if need be, this extension of racial discrimination to the field of religion; under subparagraph (d) (vii) States undertake to prohibit and to eliminate racial discrimination and to guarantee equality of treatment, notably in the enjoyment of "the right to freedom of thought, conscience and religion". Thus racial, in the sense of ethnic matters, fully encompass the religious aspect. Finally, article 3 of the Declaration on Race and Racial Prejudice of 27 November 1978 renders the legal bases for prohibiting aggravated discrimination much more forcefully when it states "religious intolerance motivated by racist considerations ..." is incompatible with the requirements of an international order which is just and guarantees respect for human rights.

56. The Declaration of 25 November 1981 should be understood in the same spirit, but conversely, i.e. religion as encompassing race. It is true that the terms "intolerance and discrimination based on religion or belief" are defined exclusively on the basis of religious considerations (see art.2, para.2); unlike the instruments relating to racial discrimination analysed above, where race is interpreted largely from a twofold standpoint, as covering both ethnicity (which itself is defined using parameters that include religion) and religion as such. Nevertheless, many of the Declaration's provisions refer to instruments where the intersection between the two types of discrimination may be inferred (preambular paragraphs 1, 2 and 7, article 3). Preambular paragraph 6 even establishes a causal link between religious freedom and the elimination of racial discrimination when it states, "...freedom of religion and belief should also contribute [...] to the elimination [...] of racial discrimination".

57. The Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992 represents an important step with regard to protection of minorities [Bokatola, 1993].[72] Article 1, paragraph 1 stipulates that "States shall protect the existence and the national or ethnic, cultural, religious and linguistic identity of minorities within their respective territories and shall encourage conditions for the promotion of that identity". In reality, the Declaration is aimed essentially at the individual rights that persons belonging to minorities should enjoy. Nearly all of the Declaration's provisions are intended for such persons, rather than minorities as such. In addition, the division between "national or ethnic, religious and linguistic minorities" is ill-founded and does not always correspond to the distribution of minorities throughout the world. A national minority may also have ethnic and/or religious specificities different from those of the majority or of other minorities.[73]

58. On the whole, although aggravated discrimination has not been provided for and is in no way given special or priority treatment, it has to be acknowledged that, because nearly all the specific instruments speak explicitly of the overlap between race and religion, in particular race as encompassing religion, discrimination against a person or minority group on religious grounds may be characterized as racial discrimination.[74] Similarly, a discriminatory measure or xenophobic practice based on religion or belief, in the meaning of the 1981 Declaration, may be aimed at the group's identity and/or its ethnic integrity.

### (b) Implicit recognition

59. Since the United Nations came into being, an impressive number of treaties and other instruments have been adopted to protect, either a specific category of individuals, property of particular importance, or even certain fields, against various forms of discrimination. It is difficult to provide a detailed analysis of all these instruments in the framework of our study. Thus, we shall examine only those provisions which relate to the overlap between race and religion.

### International Labour Organization

60. In the field of employment, several instruments have been adopted. Examples are the ILO Conventions. The discrimination provisions have been modelled after the Charter of the United Nations and the 1948 Universal Declaration, i.e. the different types of discrimination are generally treated separately.

United Nations Educational, Scientific and Cultural Organization

61. Education and culture can also be an area of aggravated discrimination. UNESCO Conventions and other extra-conventional instruments contain many interesting provisions. With regard to education, first of all, the Convention against discrimination in education of 14 December 1960 prohibits discrimination as defined in article 1, based in particular on race, religion or national origin. Articles 1 and 5 of the Convention speak not only of "person" but also "groups of persons" and "national and religious minorities".[75]

62. Concerning cultural property, recent conflicts have shown that deliberate attacks against symbolic sites are aimed at destroying the most representative characteristics of an ethnic group's cultural and religious identity. Among the many instruments adopted by UNESCO, mention should be made of the Convention for the Protection of Cultural Property in the Event of Armed Conflict, adopted at The Hague on 14 May 1954, which considers the cultural property in question to include movable or immovable property of great importance to the cultural heritage of every people, such as monuments of architecture, art or history, whether religious or secular, etc.[76]

63. Finally, the overlap between race and religion is inseparable from the culture of a people or minority. UNESCO and several specialists [Capotorti, 1991][77] acknowledge that culture is basically a matter of tradition, in the broad sense, i.e. everything that is socially inherited or transmitted through language, pictures or simply by example: beliefs, including religious beliefs, knowledge, customs, symbols. This means that culture covers, to a considerable extent, the ethnicity of a group or minority and that discrimination is likely to be aggravated if it is aimed at one of its components.[78]

64. Certain instruments, while they establish the overlap between race and religion, are aimed at protecting particularly vulnerable categories of persons. One such instrument is the Convention on the Rights of the Child, adopted on 20 November 1989; it contains a considerable number of relevant provisions that could form the basis for the elimination of aggravated discrimination.[79] The provision relating to minorities, to take one example, extends protection against discrimination, including religious discrimination, to indigenous peoples.[80] In the context of minorities, the term "indigenous people or population" is applied to a people or population that meets three essential criteria, namely, prior establishment in a given territory, non-dominance and a claim to an identity that might incorporate features of a religious nature [Schulte-Tenckhoff, 1997].[81] Several indigenous peoples are also defined by their religious beliefs and practices, and it is difficult to imagine talking about these cases without talking about the overlap between race and religion (see below, chap. II, sect. A).

## C. Regional protection

65. Racial and religious conflicts or tension exist to one degree or another on every continent. However, a study of the systems established reveals that the development of such conflicts or tension is certainly not in proportion to the actual or potential intensity of separate or aggravated forms of discrimination. The extent to which minorities, as the ideal target for aggravated

discrimination, are taken into consideration actually depends far more on the level of development of the regional protection of human rights, democracy or the rule of law than on racial and religious disparities in one region or another.

### African region

66. There is considerable ethnic and religious variety on the African continent. Ethnic groups are spread over several States whose geographical borders rarely, if ever, correspond to the human groupings on the continent. The Charter of the Organization of African Unity (OAU) wisely acknowledges this state of affairs, but the African Charter on Human and Peoples' Rights, adopted on 28 June 1981, did not manage to define the term "peoples". Does the term apply to the population of a State as a whole or to ethnic groups - and therefore to minorities - within a State? The situation in Africa is so complex that the 1981 Charter avoids the question entirely. In fact, in many African States, it would be more appropriate to speak of "multiple minorities", with no majority. In any event, while the 1981 African Charter does not explicitly recognize the concept of minority, article 2 of the Charter establishes the rights and freedoms of individuals using wording which is very similar to that used in article 2 of the International Covenant on Civil and Political Rights, although it adds distinctions based on "ethnic" origin.[82] Article 8, on the other hand, is more restrictive. Although freedom of conscience and the profession and practice of religion are guaranteed, there is no provision for freedom to adopt a religion or belief of one's choice. Moreover, the proviso "subject to law and order", which is not defined in the 1981 Charter, can lead to arbitrariness.[83] However, the Charter's contribution lies in its attention to rights and duties towards society, the State, the family and other communities (art. 27) while taking into account the promotion and protection of traditional values and positive African values (art. 29). In many of its provisions, the Charter emphasizes the idea of tolerance (arts. 28, 29, etc.).

### Cairo Declaration on Human Rights in Islam

67. The Cairo Declaration on Human Rights in Islam of 5 August 1990 can also be classed as a context-sensitive instrument (the text of the Declaration can be found, in document A/45/421-S/21/797, annex III). Discrimination on the grounds of race, colour, religion or other considerations is prohibited (art. 1). Nevertheless, article 10 stipulates that Islam is the natural religion of human beings, while at the same time the Declaration asserts that every person has the right to protection of his or her religion (art. 18). The coexistence of these provisions raises difficulties of interpretation, as it is not clear whether the "protection" provided for in article 18 concerns Islam, as the natural religion of human beings, or all other religions, particularly those of ethnic minorities.

### Arab Charter

68. The Arab Charter on Human Rights, adopted on 15 September 1994, is aimed especially at minorities. Article 29 of the Charter provides as follows: "Minorities have the right to enjoy their culture and to manifest their religion through worship and rituals". It should be mentioned that seven Arab States have entered reservations concerning this instrument. It can be observed that the Charter, unlike the universally applicable instruments, does not extend this freedom to

the teaching or the collective and public practice of religions. The preamble, however, expresses the States parties' commitment to the relevant international instruments (1948 Universal Declaration of Human Rights, 1966 Covenants and 1990 Cairo Declaration).

Asian region

69. Asia is a mosaic of ethnic groups with many religions. The Declaration on the Fundamental Duties of Asian Peoples and States, adopted by Indonesia, Malaysia, the Philippines and Thailand on 9 December 1983, introduces the concept of "cultural communities" and "Asian values", while including a large number of provisions aimed at combating discrimination on the grounds of race, religion, identity or ethnic origin.

The Americas

70. The relevant instrument with regard to the American continent is the American Convention on Human Rights (also known as the "Pact of San José, Costa Rica"), adopted on 22 November 1969. Article 12 of the Convention is modelled on article 18 of the International Covenant on Civil and Political Rights, with three differences. First, freedom of conscience and religion concerns not only religion, in the usual sense of the word, but also "beliefs". Second, this freedom also includes the freedom "to profess or disseminate one's religion or beliefs".[84] Lastly, unlike the somewhat vague obligation in article 18, paragraph 3, of the Covenant, parents or guardians can demand from States the right to provide their children or wards with education that is in accordance with their beliefs.

The European system

71. The European system is the most highly developed of the regional systems in terms of both the standards produced and the clarification in case law of many of its rules, some of which, moreover, are the same as those in universal instruments (the 1948 Universal Declaration of Human Rights, the International Covenant on Civil and Political Rights). Of all the relevant provisions, articles 14 and 9 of the European Convention on Human Rights of 4 November 1950 are of crucial importance. Article 14 prohibits, for the first time in international law, discrimination on grounds of "association with a national minority". While no instrument currently in force, including in Europe, provides a definition of this concept, it may be assumed it should not be understood in purely linguistic or cultural terms, but also in terms of potential ethnic or religious characteristics. This is because, while the identity of a minority is often defined by religion, religious identity seems to be difficult to distinguish from other attributes of the identity of peoples and of individuals (ethnic, racial, etc.). Moreover, article 9 guarantees freedom of religion and belief. However, its specificity lies in its "public order" restriction, which is far more precise in nature and limits it to the requirements of democracy and pluralism.

72. Other instruments - mostly drawn up within the framework of the Council of Europe - attest to the importance and urgency of the minority question in Europe. They include the proposal for a European convention for the protection of minorities, adopted on 18 February 1991 by the European Commission for Democracy through Law, the draft additional protocol on minorities to the European Convention on Human Rights, 1 February 1993,[85] and the Framework Convention for the Protection of National Minorities,

which was adopted on 10 November 1994 and entered into force on 1 February 1998 - the first legally binding multilateral instrument devoted to national minorities.[86] Although the Convention sets out the principles of non-discrimination and protection of minorities in many areas, it does little to clarify further the definition of the concept.[87]

## II. FACTUAL ASPECTS OF AGGRAVATED DISCRIMINATION

73. We shall first attempt to provide a system of classification for the discrimination under review before moving on to an examination of its content and scope.

### A. Tentative system of classification

74. The factual aspects of the overlap between race and religion and of the aggravated discrimination that may result from it pose a problem of identification, hence classification. There are two obvious hypotheses, one at each extreme.

75. The first is the typical example of aggravated discrimination; it can affect persons of different races and religions from the majority or from other minorities in a given country. This is the case, for example, of discrimination against black Muslims in a white Christian country. It can also be the case of white Christians in a black or non-white country where there are many non-Christian religions. It can also be the case of white Jews in a non-white, non-Jewish country.[88] Lastly, it can be the case of discrimination against indigenous populations whose beliefs and physical characteristics are different from those of the rest of the population.

76. At the other extreme are the single forms of discrimination which are based exclusively on religion or on exclusively racial considerations. Typical examples are discrimination against members of new religious, or purportedly religious, movements,[89] or discrimination against individuals of the same faith as the majority of the population but who are clearly of a different race.[90]

77. Between these two extremes there is an extraordinary variety of intermediate situations in which it is very difficult to distinguish the contribution of religion and racial factors to the root causes of tension, conflicts, discrimination and persecution of people either as individuals or because of their membership of a minority. This variety is all the more complex because other factors often come into play which make it even more difficult to understand what is actually involved. Consequently, any attempt to provide a system of classification will be all the more difficult because the impressive number and complexity of racial, ethnic and religious minorities in the world is bound to result in intersections and meeting points between race and religion.

78. Several classifications can therefore be proposed, although it is important to note that whichever one is chosen, its value will be relative. Our interest here is basically of a pedagogical nature, aimed at gaining a better grasp of the various forms of aggravated discrimination and understanding how they are distributed in order to combat them more effectively.

79. The first classification system, which is one based on geographical criteria (country, group of countries, area, continent, etc.), does not seem relevant to us. The choices are likely to be arbitrary and the methodology flawed (needless repetition, etc.).

80. The second classification system would be based on the race or ethnic minority suffering from religious discrimination. It will not be used because, as we have shown, there are some difficulties in defining and following clear criteria based on race or ethnic minority. Furthermore, such a classification might exclude persons who are the victims of aggravated discrimination but who do not, legally speaking, belong to an ethnic minority, for example because they are not nationals of the State on whose territory the discrimination took place. Even though the overlap between race and religion almost inevitably brings up the minority issue, this approach does not seem compatible with the universal instruments which protect rights regardless of the legal link connecting the individual and the State.[91]

81. A third classification system uses as a criterion the kind of religion aggravated by racial discrimination. This classification will also be ruled out, for several reasons: in the first place, it is difficult to determine the starting point, or basis, of the discrimination. In one of his last reports (E/CN.4/1995/91), the Special Rapporteur on religious intolerance states that he "had difficulty in establishing a clear distinction between religious conflicts and ethnic conflicts, and between religious intolerance and political persecution" (para. 211). Furthermore, religions are not amenable to any definition or classification.[92] Lastly, certain categories of aggravated discrimination are difficult to fit into a classification system based exclusively on the criterion of religion (discrimination against Arabs, North Africans or Jews). This classification might even obscure, or actually render invisible, the problems raised by the overlap between race and religion, insofar as it tends to focus on the latter at the expense of the former.

82. A classification based on the kind of rights and freedoms involved, in accordance with the relevant provisions of the international instruments on racial and religious non-discrimination, is interesting but will not be used here.[93] The boundaries between these rights are far from clear-cut and the risks of duplication and needless repetition are considerable.

83. The classification we will follow is essentially based on the legal and/or sociological status of the victims of aggravated discrimination (groups, minorities) in relation to the rest of the population in the territory of a State (majority, minority(-ies)). This is the only classification which seems to us to give the "issue" of the overlap between race and religion the prominence it deserves while taking into account, as we shall see, some of the criteria used in the other classifications.

84. Two main categories of aggravated discrimination can be distinguished, each having its own variations:

(a) Discrimination against individuals who are ethnically and religiously in a minority in relation to a group that is ethnically and religiously in the majority;

(b) Discrimination against individuals who are ethnically and religiously in a minority in relation to a group or several groups that are ethnically and religiously in a minority.

It is important to note in advance that this study is not, and does not pretend to be, exhaustive. What is important here is not so much the examples we find of discrimination but the systems of classification themselves. The latter should above all be operationalized in respect of the measures adapted to each classification system or sub-system.[94]

### 1. Discrimination involving a majority and persons or groups forming an ethnic or religious minority

85. Let us make clear at the outset that the term "discrimination" is used here in a very broad generic sense to include intolerance, abuses, restrictions and acts of violence. The first hypothesis we consider consists of several sub-classifications, each of which is dependent on the status and situation of the persons who are the victims of aggravated discrimination; but in all of the cases the people are ethnically and religiously distinct from the majority of the population ("majority" is understood here in the arithmetical sense of an absolute majority of the population, hence other variations within this classification framework can be conceived: majority/dominant minority; majority/numerically scattered minorities).

#### (a) Discrimination involving a majority and one or more ethnic and religious minorities

86. This is the simplest hypothesis: it concerns a large number of countries and religions. In the paragraphs below, we shall briefly examine some countries by way of example.

87. This hypothesis can be applied to India (see E/CN.4/1997/91/Add.1),[95] where the relations between Hindus and Muslims are reportedly tense and where Christians are occasionally discriminated against (E/CN.4/1995/91, paras. 60-61). The actions of certain extremist groups and ultranationalist (especially Hindu) parties against Muslim communities and their places of worship are based on "the exploitation of religion to further a programme which is in fact political" (E/CN.4/1997/91/Add.1, para. 90) in order to "gain political advantage among the population" (ibid., para. 41). The particular situation of the Muslims in Kashmir rightly attracted the attention of the Special Rapporteur, as a community seems to have become a hostage in a political conflict primarily involving two States, India and Pakistan (ibid., paras. 49, 51 and 53). On the other side, owing to anti-Hindu extremism, the conflict appears to have resulted in the expulsion of Hindus and their settlement in refugee camps (ibid., para. 27).

88. Similarly, in Bangladesh, ethnic and religious minorities (mainly Christian, Hindu and Buddhist minorities) are allegedly the victims of acts of intolerance and violence committed by Muslim extremists and of a policy of discrimination with regard to employment in the public sector (see E/CN.4/1995/91, para. 43).[96]

89. In Sri Lanka, it is alleged that the Liberation Tigers of Tamil Eelam (LTTE) are committing atrocities against the Muslims in the north of the country. Evangelical Christians are apparently often subjected to manifestations of hostility, discrimination and sometimes to violence by the local Buddhist clergy (see E/CN.4/1995/91, paras. 94-95).[97]

90. The case of Mongolia is of interest. A law passed on 30 November 1993 is said to contravene freedom of religion and the principle of non-discrimination. Foreign and even national Christians have allegedly been subjected to many instances of discrimination (see E/CN.4/1995/91, paras. 79-80).[98]

91. In the Islamic Republic of Iran, the Jewish, Assyro-Chaldean and Armenian minorities - who define themselves as specific religious and ethnic minorities - are allegedly the victims of restrictions and discrimination in respect of access to the army and the judiciary and unequal

treatment in the courts (see E/CN.4/1996/95/Add.2).[99] Moreover, article 13 of the Iranian Constitution, on minorities, apparently contains various restrictions. The most important one for our purposes is the exhaustive list provided of the recognized minorities (Zoroastrians, Jews and Christians),[100] which may lead to the exclusion of the other ethnic and religious groups and which contravenes the standards laid down in international law.[101]

92. In Turkey (where there are 46 ethnic groups), violations of human rights and minority rights have been reported. Of interest to this study are the reports that the Assyro-Chaldean and Armenian minorities' freedom of belief and freedom to worship have been violated. In particular, it is reported that Assyro-Chaldeans are regularly subjected to violence and discrimination with regard to education, social institutions and access to public service (see E/CN.4/1995/91, para. 99).

93. In Greece, the Muslim minority in Thrace is said to be hostage to political relations between Greece and Turkey and is reportedly subjected to both visible and latent forms of intolerance (the way in which "muftis" are appointed, the management of religious property and the status of religious and mother-tongue instruction) (see E/CN.4/1997/91, para. 51).[102]

94. In the Sudan, the violation of human rights involves, as in every part of the world, restrictions on ethnic and religious minorities.[103] The United Nations General Assembly, in its resolution 51/112 of 12 December 1996, condemned those violations and restrictions.[104] The policy of forced Islamization and institutional extremism is said to have led to serious violations of the rights of persons belonging to Christian ethnic minorities and to various forms of religious intolerance: arrests, torture, closure of churches, mass lay-offs in the public sector, discrimination in access to nationality, education, the army and the media, application of Shariah law to non-Muslims, etc. (see E/CN.4/1995/91, para. 93 and E/CN.4/1997/91, paras. 54-55; see also A/51/542/Add.2, para. 71 ff. and paras. 136-137). Constitutional Decree No. 7, promulgated in 1993, does protect freedom of religion but some of its provisions[105] and other legislation, in particular criminal legislation, appear to discriminate against non-Muslims, who are ethnically different from the majority of Sudanese people.[106]

95. In Thailand, it is alleged that in some circumstances religion gives rise to discrimination. Discrimination in favour of the Buddhist religion has been pointed out by the Special Rapporteur (lack of information on other religions in textbooks in State schools) (see E/CN.4/1998/6, paras. 59 and 90).

96. In Viet Nam, the Constitution is an example of a largely explicit overlapping of racial and the religious dimensions. Article 5 of the Constitution speaks of the unified State of all ethnic groups living together in the territory of Viet Nam and recognizes the right of ethnic minorities to assert their differences (see E/CN.4/1999/58/Add.2, paras. 41-42).[107] Although article 70 protects freedom of religion, it limits it through restrictive provisions, including ideological provisions, that are likely to hinder the freedom of religion available to persons belonging to ethnic minorities (ibid., chap. I and para. 107 (d)).[108] The situation with regard to the Protestant denominations of ethnic minorities seems quite disturbing, owing to the destruction of their places of worship and ill-treatment aimed at forcing these minorities to give up their faith (ibid., para. 119).[109]

97. In Indonesia, the ethnic-Chinese Indonesian minority, made up largely of Christians, was the victim, during the riots of 1998, of a wave of violence, vandalism, looting, arson and even many killings (see E/CN.4/1999/15, para. 113 ff.).

98. In Australia, it is reported that Aboriginal minorities and Australians of Asian origin are sometimes subjected to discrimination concerning, in particular, the criminal justice system, cruel, inhuman and degrading treatment and assault causing bodily harm (see E/CN.4/1997/71, para. 47 ff.).

99. The violation suffered by the Lake Lubicon Indian minority in the Lubicon v. Canada case can be classed among the cases of aggravated violation of the rights of an ethnic and religious minority under article 27 of the International Covenant on Civil and Political Rights.[110] In this case, the Human Rights Committee recognized that the expropriation of land belonging to the indigenous community by the Canadian authorities for commercial purposes violated the right of those persons to enjoy their own culture. The Committee seems to put a broad interpretation on this term, as it states that "economic and social activities ... are part of the culture of the community" in question.[111] The community also claims that the expropriation is liable to rob the members of the Band of the physical realm to which their religion attaches, in violation of article 18, paragraph 1 of the Covenant.[112] Although the Committee did not give a precise answer to this claim, it is reasonable to assume that the way of life and culture of the Lake Lubicon Band cannot - as it rightly claims - be separated from its right to practise its own religion.

100. In the United States of America, Native Americans are exposed to discrimination that affects them as a group differing from the majority in both ethnic and religious terms. Indeed, "the Native Americans are without any doubt the community facing the most problematical situation, one inherited from a past of denial of their religious identity" (see E/CN.4/1999/58/Add.1, para. 53). This discrimination provides a perfect example of aggravated discrimination, which has taken several forms, some of which no longer apply, such as restrictions on religious ceremonies (dropped when the Indian Reorganization Act was adopted in 1978) (ibid., para. 55), although others still persist. Examples are the problem of respect for the religious rights of Native Americans in federal and local correction facilities and the problem of the sacred nature of certain territories and sites (ibid., para. 60). The latter is an example of a real clash of concepts, as it stems from the failure of legislators working within a Western legal system to comprehend Native American values and traditions. Native Americans are in fact being asked to "prove their religion", and in particular the religious significance of sites, most of which are situated on land that does not belong to them. However, this demand conflicts with this minority's beliefs, because a Native American site is by definition secret and to reveal its location to non-Native Americans would, for them, be tantamount to interference in matters of religion (ibid., paras. 59-60 and 68). This conflict over legislation also arises with regard to Native American religious practices that require the use of protected animals (eagles' feathers) or hallucinogenic plants that are banned under United States legislation. The adoption of neutral legislation is therefore unlikely to protect this ethnic and religious community, whose religious practices are different from those of the majority or of other minorities.[113]

101. In Israel, Jews of Ethiopian origin (Falasha), whose culture and some of whose ancestral religious practices are different from those of the majority of the population, are allegedly subjected to frequent discrimination in medical care, education, professional training and housing policy (see E/CN.4/1997/71, para. 120 ff.).

102. The Commission on Human Rights, in its resolution 1999/9 of 23 April 1999, noted with deep concern the complex nature of the conflict in Afghanistan, including ethnic, religious and political aspects, which have resulted in extensive human suffering and forced displacement, including on the grounds of ethnicity, and condemned the widespread violations and abuses of human rights, including the right to freedom of religion.

### (b) Discrimination involving a majority and ethnic and religious groups not defined as a minority

103. As we have said, in the absence of an explicit definition of a minority in treaty law, most authors agree that there are core characteristics that allow us to distinguish a minority from the majority and from other groups of people living in a given territory. One of the criteria that may be lacking is the "objective" one of the absence of a link of nationality between the persons concerned and the State in whose territory they temporarily or permanently reside. This hypothesis concerns persons from immigrant communities. Other criteria may also be lacking, such as the absence of the subjective criterion or, in other words, the lack of a manifest desire on the part of group members to gain acceptance for their own characteristics as a minority, whose members would offer each other mutual support.[114] Of course, the absence of a particular criterion fortunately does not imply the absence of protection. The international instruments protect human rights independently of the existence of a link of nationality or whether the person concerned belongs to a minority in the terms of article 27 of the Covenant.

104. A large number of religions and ethnic groups are concerned here:

- Discrimination and xenophobia directed at North African or Arab nationals or nationals of Arab or North African origin in western Europe and the United States (E/CN.4/1997/71, para. 24) and Turkish nationals or those of Turkish origin in Germany (E/CN.4/1996/72, paras. 21 and 23, and para. 25 ff.), and Austria (E/CN.4/1997/71, para. 55 ff.);

- Discrimination against Palestinians in Israel (E/CN.4/1995/91, para. 69);

- Discrimination and intolerance in the Arab countries of the Gulf directed against foreign nationals whose religion is not sanctioned by the Koran, such as Hindus, Sikhs and Buddhists (ibid., paras. 38-39 and 54; E/CN.4/1998/6, paras. 64 and 68);

- Discrimination in Arab countries against Christians from Western countries (E/CN.4/1995/91, paras. 53-54; E/CN.4/1997/91, para. 19);

- Discrimination and intolerance affecting the Muslim community, particularly Muslims of Indian and Pakistani origin in the United Kingdom (E/CN.4/1998/79, para. 36);

- In the United States of America, Jews identified with a community on religious, cultural and ethnic grounds generally enjoy a privileged position, due in particular to favourable legislation (the clauses on non-establishment and the free exercise of religion; see E/CN.4/1999/58/Add.1, paras. 41-42). However, that should not hide the fact that they suffer from "hate crimes". In January 1998, for example, of the 8,734 crimes classed as "hate crimes", 1,400 were "religion-motivated", and of these more than 1,100 (nearly 80 per cent) were directed against Jews; these crimes mostly take the form of attacks on property and the desecration of cemeteries (ibid., para. 43). In most cases, but particularly those involving discrimination against Arabs, it is important to note, as the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance has done, that "manifestations of racism and xenophobia against Arabs are increasingly accompanied by a form of 'Islamophobia'. It is therefore difficult to separate acts of racial discrimination from acts of religious intolerance, as each may reinforce or encourage the other" (E/CN.4/1998/79, para. 36).

105. Similarly, the Special Rapporteur on religious intolerance notes that the situation of Muslims in the United States is "problematic"; Muslim representatives have said that they feel that there is both latently and openly a form of Islamophobia and racial and religious intolerance in American society (E/CN.4/1999/58/Add.1, para. 36). This is an extremely important observation and deserves some comment:

(a) A large number of ethnic and religious communities or groups or, a fortiori, minorities also seem to us to be concerned by this overlap between race and religion, independently of their status in the territory of the State (nationals or foreigners) or their numerical relationship with the rest of the population (minority/majority, minority/minorities) or of the definition of a minority;

(b) The fact that it is difficult to establish clear distinctions when dealing with double or even triple (racial/religious/sexist) discrimination is merely proof that those guilty of discrimination are not targeting exclusively the racial or religious identity of the victim. They target both identities because in their minds they completely reject the other, either in a confused way or otherwise, on the grounds of the other's beliefs, religious practices, rites and myths, as much as his racial, ethnic or even cultural origin.[115] In fact, it is not simply the superimposition of two single forms of discrimination. The conceptual difficulty pointed out by the Special Rapporteur hides a form of aggravated discrimination that cannot be described in terms of a single identity and thus cannot be governed by an ordinary regime.

### (c) Discrimination involving a majority and religious minorities claiming membership of an ethnic group

106. Some religious minorities initially make no claims for membership that might distinguish them from the rest of the population sharing with them the same racial or ethnic membership and sometimes even many characteristics, including cultural characteristics. A sort of mutation takes place when factors such as State policy, extremism, the spreading of racist ideas and incitement to ethnic and racial hatred add an ethnic dimension to the minority religion. As pointed out by the Special Rapporteur on racism, this takes the form of physical aggression, murders, attacks on

property belonging to immigrants or ethnic, racial or religious minorities, desecration of cemeteries and destruction of places of worship; the Special Rapporteur adds that "theories of racial inequality are raising their head while at the same time modern communication technologies, especially the Internet, are being perniciously employed to foment racial hatred, xenophobia and anti-Semitism" (E/CN.4/1997/71, para. 130).

107. Anti-Semitism is an example of this phenomenon of irrational hatred with regard to Jews (that is, a religion): it ultimately forces its victims to fall back for protection on membership of a group or on referents that are not religious. Anti-Semitism - as the term itself indicates - is not solely aimed at the other's religion; it takes the form of hostility and prejudice and then leads to violence against Jews and Jewish institutions (see, for example, E/CN.4/1997/71, para. 27 ff.).

108. Such irrational racism also affects the other communities mentioned above, including migrant workers in the industrialized countries. Unfortunately, it turns the very victims of racism against each other (anti-Arab racism among the Jews, anti-Jewish racism among the Arabs, etc.). Extremism, in all its religious forms (for example, certain black Muslims in the United States and Islamic movements in Europe, North Africa and the Middle East) and non-religious forms (neo-Nazi movements),[116] and the policy of forced Islamization by certain States naturally encourage this mixing of ethnic and religious dimensions.

(a) Discrimination by a majority against women belonging to one or more ethnic and religious minorities or groups

109. In some States, as a result of the economic crisis or religious extremism in society or even as a result of institutional attitudes, women may be subjected to sexism in addition to aggravated discrimination. The Commission on Human Rights, in its resolution 1999/39 of 26 April 1999, on the implementation of the Declaration on the Elimination of All Forms of Intolerance and of Discrimination based on Religion or Belief, repeatedly highlights the discrimination and violence against religious minorities, including the "arbitrary application of legislative ... measures" (sixth preambular paragraph) and "practices which violate the human rights of women" (para. 4 (c)).

110. There are many examples of these triple forms of aggravated discrimination:

(a) In the Sudan, it is alleged that the religious, ethnic and sexual identity of Orthodox Copt women in the north of the country (students, civil servants and young girls) has been violated. They have reportedly been flogged and arrested for trading or consuming alcohol and are subjected to forced Islamization and in particular to the provisions of the Islamic dress code (Act No. 2 of 1992) making it compulsory to wear clothing conforming to so-called Islamic moral standards;[117]

(b) Likewise in Afghanistan, a country with a large ethnic variety, religious extremism affects the whole of society, including non-Muslim members. Women appear to be the main victims, owing to serious restrictions in the areas of education and employment and the forcible imposition of so-called Islamic dress (E/CN.4/1998/6, para. 60 (a));

(c) In Indonesia, the Chinese community suffered badly from persecution during the 1998 riots; in particular, many Chinese women were the victims of rape and violence stirred up by organized groups. The seriousness of these violations led the authorities to take measures, including the establishment, on 15 July 1998, of the National Committee for the Prevention of Violence against Women, and of an independent fact-finding team (E/CN.4/1999/15, paras. 113-126);

(d) One might also justifiably cite some of the decisions of the Human Rights Committee under the Optional Protocol, in which discrimination on the grounds of sex, in contravention of the International Covenant on Civil and Political Rights, can be described as aggravated, although the author of the communication did not raise the question.[118]

### 2. Discrimination involving persons belonging to different ethnic and religious minorities or groups

111. The second category of aggravated discrimination concerns relations between ethnic and religious minorities or groups in a State where there is not, strictly speaking, a majority. In numerical terms, the size of these minorities may vary greatly: a minority may sociologically speaking, be in a relatively dominant position, or, in a country where there are only scattered minorities it may be less important. Here again, there may be many sub-classifications

#### (a) Discrimination between ethnic and religious minorities and groups

112. The plurality of ethnic and religious groups in some societies, combined with certain economic, political or social conditions, can make relations between the different communities difficult, particularly as, in some cases (Africa, for example), ethnic and religious groups are scattered across a number of States and exacerbate tensions between those States.

(a) In Kenya, in October 1993, inter-ethnic conflicts between the Masai (1.8 per cent of the population) and the Kikuyu (20.8 per cent) reportedly resulted in massacres and the destruction of Catholic and Evangelical churches (E/CN.4/1995/91, para. 71);

(b) In Ghana, ethnic and religious conflicts allegedly occurred in the north of the country in February 1994, causing the death of at least 1,000 people; the clashes involved members of the Dagomba and Nunumba ethnic groups, on one hand, and the Konkomba on the other. The Catholic church was reported to have been attacked, with Islamized Dagombas suspecting the Catholics of helping the Konkombas (ibid., paras. 57-58);[119]

(c) In Benin, the activities of a Christian group were reportedly suspended following the destruction of a voodoo temple (ibid., para. 44);

(d) In Malaysia, three minorities dominate: Malays (47 per cent), Chinese (33 per cent) and Indians (9 per cent); but in some States, although Muslims are in a very small minority (7 per cent in Kelantan State), discrimination by the authorities affects the Christian minorities in particular (ban on the sale of the Bible in Malay; policy of introducing laws reflecting the "Hudud" to punish certain offences committed by Christians) (ibid., para. 74);

(e) Ethnic and religious conflicts can sometimes take a tragic turn. In Rwanda, both clergy and lay people have been massacred even in places of worship (ibid., para. 92);

(f) In the United States, the Afro-American organization "Nation of Islam" is considered by both Muslim and Jewish leaders to be an extremist group within the American Muslim community and a source of intolerance purveying messages of hatred for whites, Catholics, Jews, Arabs, women, etc. (E/CN.4/1999/58/Add.1, para. 39).[120]

## (b) Discrimination between variants within ethnic and religious minorities or groups

113. This hypothesis can concern ethnic and religious groups or minorities that are in principle different, but within which ethnic or even religious variations mark out subgroups. A second variant may be found in a country where there is a religious majority, but the population is so ethnically mixed that it is difficult to distinguish clearly between religious and ethnic conflicts. This category applies to many African States (see, for example, E/CN.4/1995/91, paras. 57-58).

114. In Ethiopia, the epitome of the multi-ethnic society (95 registered ethnic groups), in addition to the rivalry between Christians and Muslims (40 per cent of the population), tensions between the Protestant and Orthodox churches have been noted by the Special Rapporteur (ibid., para. 55). In Viet Nam, discrimination involving ethnic and religious minorities (more than 53 ethnic groups) or internal communities within these minorities have been noted by the Special Rapporteur (against the Buddhist Church, the Cao Dai Church,[121] the Roman Catholic Church) (ibid., para. 100). In this context, it is important to note in particular the restrictions and discrimination suffered by the Khmer Krom community: these are the descendants of the Khmers of the Angkor civilization, Buddhist by religion but of Indian origin (E/CN.4/1999/58/Add.2, paras. 44, 68 and 118).

## (c) Discrimination involving minorities which are ethnically homogenous but define themselves in religious terms

115. Situations arising as a result of war, ethnic claims or "ethno-centric" nationalist movements are conducive to discrimination of this kind. In the Balkans, for example, the collapse of the State gave rise to micro-States that have been incapable of overcoming the ethnic and religious rivalries between the "constituent nations or peoples" and the other nations and minorities. In these countries, there is an ethnic dimension to religion, and religion may even become a "nationality". Multiple identities become intertwined and people are "nationals" to varying degrees, despite the constitutional guarantee of non-discrimination.

116. In Croatia, Serbs and other minorities are reported to be suffering from harassment, looting and many forms of discrimination, in particular as regards the application of the law and criteria for recognizing Croatian nationality.[122] In Bosnia and Herzegovina, refugees belonging to minorities suffer intimidation and violence and their homes are being destroyed, in order to discourage their voluntary return.[123] In Kosovo, the gross violations of human rights suffered by ethnic Albanians (torture, deaths in detention, summary executions, widespread destruction of homes, property and villages, mass forced displacement, mass destruction of identity documents, etc.) can be compared to the crime of genocide and have been condemned in several international instruments.[124] The presence in Kosovo of KFOR, an international force, has not prevented the resurgence of inter-ethnic conflicts between the Serb and Albanian communities, notably in the town of Mitrovica in February 2000, further complicating the search for a political solution in Kosovo.

## B. Evaluation of content and scope

117. On the basis of this study of various forms of intolerance, discrimination or oppression on both racial and religious grounds, it is possible to make the following six basic comments.

### Comment No. 1

118. Just as in separate, or single, forms of discrimination, no religion, State or human group is safe from intolerance or discrimination.[125] This statement deserves some elaboration. "One of the most basic of human rights is that of religious liberty", as Leonard Swidler justly wrote [1986], "for religion is perhaps the most comprehensive of all human activities ... Since this is so, it also, however, tends towards absolutism and authoritarianism ...".[126] This tendency is often more noticeable when there is competition among several religions, and when they coexist within a multi-ethnic social situation, or even when the society in question is ethnically homogeneous, inter-denominational rivalries can take on an ethnic dimension under the influence of certain events, wars, economic discrimination, etc.[127]

119. Moreover, aggravated discrimination tends to intensify or become more likely to occur when the State itself officially adopts the religion of the majority or of the ethnically dominant minority, or subscribes to a particular ideology. The State religion or the religion of the State is not, of course, a characteristic of the religion, but of the State. However, if in its Constitution the State professes its adherence to a particular faith, some will see the mere profession of that faith - whatever the good intentions of the State - as a form of discrimination against the ethnic or religious minority or minorities. In the area of legislation, moreover, some such States adopt clearly discriminatory provisions, as we have seen, in order to impose the constitutionally established religion or ideology, and therefore a particular vision of society and of the universe, on members of ethnic or religious minorities.[128] This is no doubt one of the most unacceptable violations of an individual's right to have and practice his religion and that of his ancestors. It is true, as the Special Rapporteur has noted, that "States which are or claim to be based on religion may be either exclusive - for the benefit of the predominant religion alone - or open and respectful vis-à-vis other religions" (E/CN.4/1998/6, para. 42). However, to the extent that everything ultimately depends on the goodwill of the State, the personality of those in office at any given moment, and other unpredictable or subjective factors, there is no serious guarantee in law that the State will at all times respect minority ethnic and religious rights.

120. In States with a range of religious and ethnic identities, the constitutional profession of an official religion, a State religion or a religion of the State, may be politically or historically justified, but by its very nature it carries the seed of aggravated discrimination.[129] As Gordon Allport [1954] puts it, a possible root cause of religious intolerance stems from the fact that religion usually encompasses more than faith. Often it is the focus of the cultural tradition of a group.[130] He notes that this applies to the majority of religions. Therefore, when the State itself announces its religion in its Constitution, the law ceases to reflect the ethnic and religious variety of the society, and the way is opened to arbitrary action and intolerance.

Comment No. 2

121. Discrimination and intolerance are practised not only by the State or its federal, regional or local subdivisions; they are also practised by members of different groups, one against the other, particularly where there is a wide variety of minorities and no true majority (see above, para. 112), or of groups which are ethnically and religiously different from the majority of the population (see above, paras. 103-105). Tolerance is first and foremost an attitude of profound understanding which should be reflected in an individual's daily behaviour above all. However, whether the State adopts a completely neutral position on religion and allows it to remain a private matter, whether it rejects religion or professes a faith, it has a fundamental role to play in promoting tolerance and ensuring respect for different religious and ethnic identities. The State and civil society should take steps to change individual attitudes so as to enable groups, if not to coexist peacefully, at least to live without confrontation. The action they take should be appropriate to the relations a minority or ethnic and religious group enjoys with the majority or with other groups, and relations within the groups themselves. When a State, in its Constitution, claims membership of the same group as the majority or the dominant minority, it has, if anything, a greater responsibility to avoid discrimination than where there are scattered minorities, or where the State's neutrality is an especially important principle.

Comment No. 3

122. In some cases, it is very difficult to distinguish between religious and racial or ethnic discrimination or intolerance. In other cases the two forms of discrimination may even become confused in the mind of both the perpetrator and the victim of the discrimination. As stated in chapter 1 of this study, religion shares something of the definition of ethnicity, just as ethnicity is basic to religious identity.

Comment No. 4

123. Similarly, it is sometimes difficult to separate out religious and ethnic considerations from underlying factors that might help to understand the true intentions of the perpetrators of discrimination. In the study already quoted, Gordon Allport [1954] argues that deviation in creed alone does not account for the persecution, and that discrimination is not caused by religious doctrines at all. Similarly, E. Odio Benito concludes that there does not seem to be any discrimination that is purely and exclusively religious.[131] In fact, the "rest of the iceberg" is often to be found elsewhere, that is, in questions of politics and power, relations between States, social and cultural factors, economics and even ancient history. Thus what seems at first to be an irrational rejection of the other person's religion, race or sex, merely helps support or inflame a feeling that can be fully explained at a much more rational level or at least at a level where objective factors are important enough to be dealt with in quite practical ways.

Comment No. 5

124. In many of the cases studied, the factors that lead to aggravated discrimination and intolerance are not specific but are also to be found in single forms of discrimination. Some of the most important of these are ignorance and lack of knowledge of others, of their religion and religious customs, rites and mythology, lack of dialogue, stereotyping, prejudice, the negative

effects of education and the media, social tension, economic crises or difficulties, authoritarianism and lack of democracy, the use of ethnic and religious differences for political purposes or as international policy, use of religion for ethnic purposes, etc.[132]

Comment No. 6

125. In many of the cases studied, however, certain factors are conducive - sometimes dramatically so - to aggravated discrimination. Extremism is one such factor, and an essential one.[133] Whether the extremism is based on an interpretation of the religion or on political factors, whether it is violent or not, whether it is intra-religious or inter-religious, whether is exists only within the society or at the State level, extremist movements tend to confirm and disseminate with a good deal of success, an association between the religion or ethnicity of the other (Muslim, North African Arab, Black, Jew, White, Christian, Indian) and certain events - real or imagined - that have negative or unfavourable connotations (economic crisis, unemployment, fanaticism, terrorism, Zionism, insecurity, crime, colonialism). Ignorance of the other prevails and is consciously exploited, in order to foment antipathy and hostility. Arabs or North Africans are frequently equated with Islamists, terrorists or fanatics. Likewise, Jews become Zionists or are blamed for all the world's ills. The Christian is automatically White and a colonialist; the Asian is a Buddhist or a dangerous scoundrel. Lastly - though the list could go on - in situations of intolerance and systematic human rights violations, women are the targets of the worst forms of discrimination, including violence. No society or religion has a monopoly on extremism; extremism deserves special attention because it can produce situations which are difficult to control and can imperil the human right to peace (E/CN.4/1998/6, para. 114; E/CN.4/1999/15, para. 74ff). It can even be said that it requires special treatment: it goes further than mere intolerance, amounting purely and simply to a denial of freedom, religion and any right to diversity. A special strategy is therefore needed in order to address both its causes and effects.

## III. CONCLUSIONS AND RECOMMENDATIONS

126. On the basis of the legal and factual elements of the issue of religious discrimination aggravated by racial discrimination, the following five conclusions can be drawn.

Conclusion 1

127. None of the instruments studied contain any special provisions establishing a specific legal regime or special treatment covering acts of aggravated discrimination, particularly those that affect minorities. That applies also to other forms of aggravated discrimination not included in this study (for example those that affect women or children belonging to ethnic and religious minorities). All the instruments, regardless of their nature, legal status or scope, strongly condemn racial and religious discrimination. In some international instruments, the right to non-discrimination is even treated to some extent as a right from which no derogation is permitted, which gives it a status similar to the peremptory norms of international law (International Covenant on Civil and Political Rights, art. 4, paras. 1-2; art. 18). However, discrimination based on the identification of the victim with multiple groups does not appear to receive particular attention.

Conclusion 2

128. Nevertheless, a study of the various provisions leads to the conclusion that there is a body of sufficiently well-established rules and a set of principles shared by all the nations and all the States members of the international community, which suggests an openness to theoretical acceptance of a right to freedom from aggravated discrimination. At the international level, most of these principles are dispensed throughout the human rights instruments adopted since the United Nations came into being. The universal instruments are generally more advanced than the regional texts in this regard. The universal instruments address the issue of racial and religious discrimination in depth. Some of them even explicitly define the overlap between race and religion, either in the course of defining the form of discrimination under consideration, or in determining the scope ratione personae of the various instruments. In the course of this study, the definition of ethnic and religious minorities, in particular the concepts of ethnicity and minority, brought out these links.

Conclusion 3

129. Internal legislation is generally speaking protective in nature and many Constitutions, in their sections on fundamental rights, proclaim the right to non-discrimination; some of them grant specific rights to minorities. Even so, many forms of discrimination, particularly those relating to religion, are directly or indirectly enshrined in those Constitutions and affect ethnic groups in particular.

Conclusion 4

130. A study of the facts has shown that the overlap between racial and religious discrimination is not merely imagined. No region in the world and no religion, whether major or minor, traditional or non-traditional, monotheistic or polytheistic, is immune to aggravated discrimination.

Conclusion 5

131. The instruments studied would appear, therefore, to be out of phase with reality. At any rate, they do not appear to accept the full consequences of their own recognition of the links between race and religion. This overlap is a product of the tremendous richness of human civilization. The right to freedom from aggravated discrimination is therefore integral to international human rights protection, in particular to respect for the plurality of individual identities. Aggravated discrimination deserves special, or even priority, attention, because when it affects minorities or minority groups, its cumulative nature is a threat to law and order and/or a source of encouragement to potential or actual separatist tendencies.

132. Action is needed: there are many possibilities. Action may be taken to strengthen protection (section A), or to prevent aggravated discrimination (section B). Internal measures, although their scope differs from that of international measures and they emerge through different processes, are nonetheless a logical development and extension of that action. Moreover, international measures are meaningless if they are not taken up or followed up at the national level.[134]

## A. Strengthening protection against aggravated discrimination

### 1. International protection

133. It seems clear that legislative provisions, whatever their nature or origin, should anticipate and take into account the possibility of aggravated discrimination. The first step in strengthening international protection is to consolidate existing means and mechanisms. The international community, in particular the Commission on Human Rights, have done considerable work in this area, as regards protection of both freedom of religion and persons belonging to minorities. This work could be reinforced by adopting the measures described below.

134. Existing instruments should anticipate the possibility of aggravated discrimination. It is vital to note at this point that the issue of discrimination, in particular religious discrimination - and even more so religious discrimination aggravated by racial discrimination - is a sensitive topic, and one on which States are by no means in agreement.[135] It took 19 years for the idea of a declaration on the elimination of all forms of intolerance and of discrimination based on religion or belief (first suggested in 1962) to be realized (in 1981) [Odio Benito, 1985; Walkate, 1991].[136] What matters is not so much the formal legal status of the instrument as its acceptance by as many States as possible and, above all, whether it is effectively observed by those States [Odio Benito, 1989].[137] It would also be necessary to begin working within the framework of existing mechanisms towards, for example, the adoption of a resolution dealing specifically with aggravated discrimination.

135. Procedures for protection against aggravated discrimination in the context of the conventions and extra-conventional instruments in force should be strengthened. Special treatment is one possibility: prioritizing the consideration of cases of discrimination by the various human rights bodies and organizations, for example, or establishing urgent procedures and mechanisms for cutting deadlines for States to reply to complaints or allegations of discrimination of this kind.[138]

136. Coordination and harmonization of the various human rights protection mechanisms is necessary, particularly where their spheres of activity overlap and include aggravated discrimination. Systematic exchange of information and joint action by special rapporteurs, where possible, could be useful in this regard.

137. Such a measure would require greater financial, human and logistic resources to be allocated to the mandates of the Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance and of the Special Rapporteur on the elimination of all forms of religious intolerance and of discrimination based on religion or belief.[139] The various reports repeatedly draw attention to this lack of resources (administrative and financial difficulties) and it therefore deserves serious consideration.[140]

138. In their respective reports the two rapporteurs repeatedly, and rightly, stress the importance of their in situ visits; these visits should therefore be given stronger backing. According to the Special Rapporteur on racism, these visits make it possible to move away from cold print and statistics and experience the real situation and its contradictions, through dialogue

with those involved on a daily basis. They also make it possible not only to publicize the positive work being done, and the mechanisms used, by the United Nations, in combating racial and religious discrimination, but also to work directly with the interested parties (States, representatives of ethnic groups and minorities, NGOs) and thereby avoid a deterioration in the relations between them and in some cases even help to resolve conflict situations. The special rapporteurs and the various human rights treaty monitoring bodies could be requested, if necessary, to devote space in each of their respective reports to particular developments in the area of aggravated discrimination.

139. Special action should be taken to persuade States that have not yet done so to ratify the international conventions against the various forms of discrimination, and to continue to make efforts to ensure the universal recognition of individual complaints under the conventions.

## 2. Internal protection

### (a) Improvement of legal protection, in particular under criminal legislation

140. With regard to States' attitude to legislation in this area, a number of the general recommendations formulated at the United Nations Seminar on the encouragement of understanding, tolerance and respect in matters relating to freedom of religion or belief (Geneva, 3-14 December 1984) (ST/HR/SER.A/16, para. 102) are still of relevance today. They need, however, to be adapted very specifically to the potential discrimination situations with which this study is concerned. For example, high priority should be given to action to implement international standards on the protection of freedom of religion or belief and against racial discrimination. Each State should provide, if necessary and in accordance with its constitutional system, constitutional and judicial guarantees to ensure that freedom of religion or belief and membership of a minority or an ethnic and religious group are protected in a concrete manner by explicit provisions. It would be highly desirable for some States to enact general legislation based on international standards (see, for example, E/CN.4/1999/58/Add.1, para. 72).

141. States must make efforts to enact legislation or to modify existing legislation, as appropriate, in order to prohibit all discrimination based on identification of individuals with multiple groups. Most importantly, positive criminal legislation should be enacted, not only imposing severe penalties on single forms of discrimination, but above all defining a new offence of concomitant racial and religious discrimination, which should carry a specific penalty, and naturally one that is heavier than that imposed for single forms of discrimination, whether religious or racial.[141] United Nations bodies (General Assembly, Commission on Human Rights, etc.) could prepare model legislation for the guidance of States in enacting domestic legislation, as has already been done in the area of racial discrimination.[142] A similar initiative in the area of aggravated discrimination is strongly recommended.

142. These guarantees must be followed by the establishment of effective remedies for the victims of acts of aggravated discrimination. The effectiveness of remedies depends on a number of criteria that are very well known.[143]

### (b) Establishment of an independent authority to ensure equal opportunity and to monitor racial and religious discrimination

143. States should consider establishing, as several countries have already done (Australia, Belgium, India, Norway, United States), an independent authority to monitor racial and religious discrimination and, more particularly, aggravated discrimination, and to make proposals for legislative, economic and social reforms. This authority should have genuine autonomy, i.e. its members should be independent of Government, and it must be given guarantees of security and inviolability. Its task would be, inter alia, to receive and consider complaints relevant to its work. It may also initiate and pursue inquiries on its own motion, entrusting them to one of its members or independent specialists. Lastly, it would be responsible for conciliation or mediation, in cooperation with domestic judicial bodies, among the parties belonging to different ethnic and/or religious groups, and for dealing with disputes arising from acts of religious and racial intolerance.[144]

## B. Prevention of aggravated discrimination

144. In several of his reports, the Special Rapporteur on religious intolerance summarizes the essence of what needs to be done in this area: "Human minds are the source of all forms of intolerance and discrimination based on religion or belief, and should therefore be the main target of any action to curb such behaviour" (A/50/440, para. 82). In matters of human rights, a culture of tolerance cannot be imposed. Prevention therefore has a crucial role to play. The enormous progress that has been made in protecting human rights has been due to preventive action and a positive evolution of the human mind. Action can be taken in several areas: education and training, information and communication, inter- and intra-denominational dialogue, town planning and democracy and development.

### 1. Education and training

145. Central to prevention is the idea of education and culture in the broadest sense of the terms. It is not only poor or inadequate punitive legislation that produces acts of discrimination; culture and education, although they may not actively promote such attitudes, may not do enough to stigmatize them. The role of education was recognized very early on in several international instruments.[145] "Education can make a decisive contribution to the internalization of values based on human rights and to the emergence, both at the individual as well as the group level, of attitudes and behaviour reflecting tolerance and non-discrimination" (A/50/440, para. 36). Tomorrow's decision-makers and citizens can begin acquiring a spirit of tolerance and a positive image of others at a very early age. The school, like the family, is a place where minds are formed, whether tolerant or not; it is a key element of action to prevent religious and ethnic discrimination. The school, and especially primary and secondary school, is a prime training ground for the fight against racial and religious discrimination. The provisions of article 5, paragraph 2 of the Declaration on Race and Racial Prejudice of 27 November 1978, are very useful in that regard: States and other competent authorities and the teaching profession must ensure "that curricula and textbooks include scientific and ethical considerations concerning human unity and diversity and that no invidious distinctions are made with regard to any people", and should make "the resources of the educational system available to all groups of the population".[146] It is essential to disseminate and popularize the principles contained in the

relevant international instruments throughout the school population (by organizing special courses on tolerance and non-discrimination, encouraging the formation of human rights clubs and promoting the activities of NGOs in this area).

146. The realization of these aims requires specific measures to be adopted as a matter of urgency, in coordination with UNESCO; one of these might be a survey of the content of school textbooks and manuals, in particular in those countries with large numbers of ethnic and religious minorities (see chap. II, sect. A.2, para. 111ff). Such a study could expose any shortcomings and highlight and take advantage of good practice in information dissemination and training. The results of the study "could help to shape an international educational strategy, centred on the definition and implementation of a common minimum curriculum of tolerance and non-discrimination" (E/CN.4/1997/91, para. 65). The United Nations, UNESCO and UNICEF could well cooperate in such a project. This strategy should form part of the educational training curriculum of primary and secondary school teachers and indeed of all who are involved on a daily basis with the educational scene. It could be extended to include other professionals who, as we saw in chapter II (Factual Aspects), may be concerned by the problem of aggravated discrimination. The programme of advisory services and technical assistance of the Office of the United Nations High Commissioner for Human Rights could make a valuable contribution in this regard.

147. Generally speaking, what States need to do is ensure that, whatever the ethnic and religious make-up of the society, their educational system is capable of observing the following principles, which form the basis of a policy striking at the roots of aggravated discrimination:

(a) Schools in particular should be free of all dogmatism and encourage social integration and progress through education and teaching. The State should ensure that public-sector education, at least, does not practise discrimination, for example through a policy of segregating classes according to membership of different ethnic and religious minorities, but promotes dialogue and positive understanding of others;

(b) Complete freedom of expression must be guaranteed within educational establishments and young people must be led to respect others and renounce racism;

(c) States should develop curricula that follow the principles that should govern human rights education, in particular the culture of non-discrimination;

(d) Text book production is of the utmost importance and special attention should be paid to this point so that, in forming young minds, a balance is struck between pride in their own various identities (nationality, religion, ethnicity, etc.) and respect for the groups others belong to.

### 2. Information and communication

148. In many countries, the media in general and the popular press in particular frequently purvey prejudices and stereotypes that may foment racial and religious discrimination.[147] Information plays a vital role in improving the dissemination of the principles contained in United Nations instruments. Prevention is essential if the majority is to get to know the

minorities and the minorities are to understand each other better. Several measures could be envisaged: access to the media by minorities and ethnic and religious groups; widespread and sustainable dissemination of notions of tolerance, solidarity and non-discrimination; training workshops for media representatives; establishment of mechanisms for consultation between the media and ethnic and religious communities and preparation of minimum rules or a code of conduct, in consultation with the media. The State's role becomes especially important at times of crisis or tension within the society (war, famine, disaster). The media should avoid fuelling tension and especially blaming one religious or ethnic group for the crisis. That is a particular problem given the tendency of some elements of the media to exploit feelings of fear and rejection of others in order to improve their circulation or ratings. It is here that the authorities have a role to play in striking a balance between the required freedom of expression and combating racial and religious discrimination.

149. Particular attention needs to be paid to some modern communication technologies. Internet, for example, has become a powerful tool for the worldwide propagation of racism, intolerance and various forms of discrimination (see chap. II, sect. A.1 (c), paras. 106-108; also E/CN.4/1997/71, para. 130). The spread of this formidable instrument is worrying, especially in certain countries. A study published in the United States in 1999, for example, noted one Internet site promoting racism in 1995; that figure had jumped to 600 by the end of 1997, 1,426 in March 1999 and 2,100 by 15 July 1999.[148] This runaway expansion is partly due to American legislation which, although it punishes discrimination, also considers that racist opinions, if they are not expressed violently, are protected by the right to freedom of expression guaranteed under the United States Constitution.[149] One study suggests that, despite the difficulty of the task, several actions are possible. First, it must be shown that racism does not merely lead to hatred but itself constitutes a form of discrimination: authorizing it is tantamount to legitimizing illegal discrimination. In other countries, a number of legal and technical measures could be envisaged although they do not provide definitive solutions to the problem: voluntary or compulsory self-regulation by service providers, geographical limitations on racist opinions and criminal and civil proceedings in the host country.[150] Lastly, the international community and States should be aware that this new means of communication is seriously out of control and that there is a need for national legislation on racism, where appropriate, including racism on the Internet, and for urgent cooperation to find suitable solutions to this sensitive issue that will meet the requirements of democracy while at the same time prohibiting racial and religious discrimination.

### 3. Dialogue between and within faiths and ethnic groups

150. The representatives of ethnic and religious communities should be involved in action to promote a culture of dialogue and tolerance. They should make use of anything in their own religions that can contribute to a better understanding of others and respect for their identity, and prevent religions serving the cause of intolerance. A number of countries have had instructive experiences in this regard. In the United States, for example, the Interreligious Council of Southern California has sought through its various intercommunity and interdenominational activities to promote mutual understanding and dialogue and to prevent intolerance and discrimination (E/CN.4/1999/58/Add.1, para. 40). Similarly, the Catholic/Jewish Educational Enrichment Programme sends rabbis to Catholic schools and a Catholic teacher to Jewish

schools in order to improve understanding between the two communities (ibid., para. 45). Such action should be encouraged by Governments, especially in countries where many ethnic and religious communities live side by side.

### 4. Town planning policies

151. In some societies where there is a complex ethnic and denominational mix (see chap. II, sect. A.2), the layout of urban areas may be a factor in the emergence of a culture of rejection of others. The State and its subdivisions should make appropriate use of town planning to foster interaction between the various ethnic and denominational groups and to create a degree of solidarity and interests in common. Every effort should be made to avoid creating ghettos or compartmentalizing the various groups. The example set in many countries by towns with a large number of communities living side by side in the same space without confrontation (shopping streets, town centres, etc.), should provide inspiration.

### 5. Democracy and development

152. The Vienna World Conference on Human Rights rightly emphasized that democracy, development and the respect for human rights and fundamental freedoms are interdependent and interconnected, and this trial is stressed in many of the reports of the Special Rapporteur on religious intolerance.[151] Whatever preventive or protective measures are adopted, there can be no skimping on democracy or development. Poverty, marginalization, totalitarianism, an absence or lack of democracy, and arbitrary action are a breeding-ground for all forms of extremism. They are capable of exacerbating religious and ethnic tensions, sparking conflicts and bringing to nought all efforts to protect human rights and minorities and to prevent discrimination against minorities.[152] These goals are all too vague as yet, it is true, and may appear over-ambitious or hard to attain, yet specific, immediate action can still be taken and can, in the long-term, reduce tension and gradually eliminate the root causes of discrimination. Thus, States and other actors (NGOs, civil society, international development agencies, etc.) could introduce policies to provide financial, economic and social support to those ethnic and religious groups that are particularly disadvantaged, in order to combat extreme poverty, avoid exclusion and foster solidarity among the various groups that make up a society. Likewise, the State can play a vital role in introducing an ethical element into political life and particularly into the work of political parties and associations so that identification of an individual with several groups will no longer result in discrimination.

## Notes

[1] See Joseph Yacoub, Les minorités dans le monde, Paris, Desclée de Brouwer, 1998, pp. 28-29.

[2] See, in particular, Elizabeth Odio-Benito, Special Rapporteur of the Sub-Commission on Prevention of Discrimination and Protection of Minorities, "Elimination of all forms of intolerance and discrimination based on religion or belief". United Nations, New York, 1989, Sales No. F.89.XIV.3, para. 157.

[3] Treaty-monitoring mechanisms provided for in many conventions, including the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965; extra-conventional mechanisms and the appointment of special rapporteurs on racial issues and the protection of minorities and on forms of intolerance and discrimination based on religion or belief.

[4] One author has counted over 30 terms used to designate minority groups in the world: race, ethnic group, ethnic minority, linguistic minority, national minority, founding people, constituent people, indigenous people, native population, tribal peoples, distinct people, cultural community, distinct society, nationality, cohabiting nationality, etc. See Yacoub, op. cit., p. 840.

[5] Faith, belief, sect, new cults, minority religion, religious minority, age-old religion, major religions, traditional religion(s), etc.

[6] Domestic legislation (constitution, laws, etc.) will not be studied in a section of its own. It will be studied either in relation to the analysis of certain concepts important to this study (chap. I) or in relation to the factual aspects of discrimination (chap. II).

[7] This kind of discrimination can affect several categories of persons, including individuals, religious groups and religious minorities who are not ethnically different from the rest of the population but who do not belong to, or who state that they do not belong to, the dominant religion.

[8] There may of course be other kinds of aggravation resulting from identification with multiple groups: religious and sexist, ethnic religious and sexist, or even religious, ethnic and sexist, in contravention of article 2, paragraphs 1 and 2, of the Convention on the Rights of the Child of 20 November 1989.

[9] This is particularly true of some Orthodox churches (Armenian, Georgian, etc.) and, to some extent, the Jews and the Sikhs. See Asbjørn Eide, "Possible ways and means of facilitating the peaceful and constructive solution of problems involving minorities" (E/CN.4/Sub.2/1992/37, para. 93).

[10] This element makes it possible to distinguish minorities from minority religions. The concept of a minority religion seems to be much more vague; its followers are often citizens with no desire to differentiate themselves from others. One day, they simply embrace a religion that is not the religion of most of their compatriots. See, in particular, Jacques Robert, "Constitution et religions minoritaires", Recueil de l'Académie internationale de droit constitutionnel, CERP, 1994, Tunis, p. 176.

[11] "Study on the rights of persons belonging to ethnic, religious and linguistic minorities", United Nations, New York, 1991, E/CN.4/Sub.2/384/Rev.1 (sales No. F.91.XIV.2), para. 564.

[12] "Proposals concerning a definition of the term 'minority'" (E/CN.4/Sub.2/1985/31), 14 May 1985, para. 181: "A group of citizens of a State, constituting a numerical minority and in a non-dominant position in that State, endowed with ethnic, religious or linguistic characteristics ...".

[13] "Any group of persons residing in a sovereign State, representing less than half of the population of the national society, whose members share characteristics of an ethnic, religious or linguistic nature which distinguish them from the rest of the population."

[14] Yacoub, op. cit., p. 123. The author puts a figure on minorities' numerical strength (less than half of the population) and adds the criterion of residence in the territory of the State.

[15] Advisory opinion of 31 July 1930, "The Greco-Bulgarian 'communities'" (Series B, No. 17, p. 21). The PCIJ has a broad concept of minority that also covers minorities whose members do not have the nationality of the State. See "Treatment of Polish nationals and other persons of Polish origin or speech in the Danzig territory", advisory opinion of 4 February 1932 (Series A/B, No. 44, p. 39). On the other hand, the PCIJ refers to the number criterion in another case, that of the abolition of private schools in Albania (advisory opinion of 6 April 1935, Series A/B, No. 64, p. 17), where the minority is distinguished from the "majority" by the characteristics already mentioned.

[16] For a comprehensive study of the issue of the definition of minorities, see Oldrich Andrysek, "Report on the definition of minorities", The Netherlands Institute of Human Rights, SIM Special, No. 8, 1989.

[17] The Framework Convention for the Protection of National Minorities, which was adopted by the Council of Europe on 10 November 1994 and entered into force on 1 February 1998, contains no definition of the concept of national minority because it was impossible to produce one that met with the approval of all States members of the Council of Europe.

[18] Article 27 of the Covenant; article 1, paragraph 1, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992; article 2, paragraph 1, of the draft Convention for the Protection of Minorities adopted by the European Commission for Democracy through Law of 8 February 1991. For the definition of a minority in the latter instrument, see Giorgio Malinverni "Le projet de Convention pour la protection des minorités élaboré par la Commission européenne pour la démocratie par le droit", Revue universelle des droits de l'homme, 24 July 1991, No. 5, p. 162.

[19] The latter criterion has been used by the Human Rights Committee to recognize the specific rights of an indigenous minority of Indians in Canada under article 27 of the Covenant; see the report of the Human Rights Committee, vol. II (A/45/40). See also "Les inégalités historiques et certains faits (prospection de pétrole et de gaz) plus récents menaçant le mode de vie et la culture de la bande du Lac Lubican violant les droits des minorités (article 27: affaire Lubicon c. Canada)", Revue universelle des droits de l'homme, 28 March 1991, No. 3, paras. 2.2 and 33, pp. 69-70.

[20] For example: minority (Belgium, art. 11; Hungary, Act of 1993; India, art. 29); ethnic origin (Bulgaria, art. 6; Togo, art. 7); ethnic minority (Viet Nam, art. 5); community (Cyprus, art. 2; Benin, art. 11); indigenous minority (Canadian Charter of Rights and Freedoms, 1982, art. 15); indigenous people (Chile, Act of 1991).

[21] See also article 62, pursuant to which the Economic and Social Council may make recommendations for the purpose of promoting respect for, and observance of, human rights and fundamental freedoms for all.

[22] Aside from the fact that protection of minorities is a factor in domestic and international peace and stability, recognition of minorities and other ethnic and religious groups does not imply in any way a return to the principle of nationalities, or a redrawing of State borders; that period should be regarded as over and done with. See Malinverni, op. cit. pp. 158-159; Bruno de Witte, "Minorités nationales: reconnaissance et protection", Revue Pouvoirs, 1991, vol. 57, p. 117.

[23] See, for example, article 8, paragraph 4, of the Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities of 18 December 1992; article 1, paragraph 2, of the draft Convention for the Protection of Minorities, drawn up by the European Commission for Democracy through Law, of 8 February 1991 and article 21 of the Framework Convention for the Protection of National Minorities, adopted by the Committee of Ministers of the Council of Europe on 10 November 1994.

[24] The International Covenant on Economic, Social and Cultural Rights contains a provision (art. 2, para. 2) which corresponds word for word to the provision cited above from the Universal Declaration of Human Rights of 1948 (art. 2, para. 1).

[25] "Each State party to the present Covenant undertakes to respect and to ensure to all individuals within its territory and subject to its jurisdiction the rights recognized in the present Covenant, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status" (International Covenant on Civil and Political Rights, art. 2, para.1).

[26] Human Rights Committee, General Comment 18, paras. 6 and 7 (HRI/GEN/1/Rev.3). See below for an analysis of the relevant provisions of the 1965 Convention. The Committee also refers to article 1 of the Convention on the Elimination of All Forms of Discrimination against Women of 18 December 1979.

[27] The words "such as" and the expression "other status" in article 2, paragraph 1, and in other provisions of the Covenant (particularly article 26) allow this extrapolation to be made.

[28] See Yacoub, op. cit., pp. 72-73. Y. Ben Achour, "Souveraineté et protection internationale des minorités", RCADI, 1994, T. 245, pp. 348 and 351.

[29] One author rightly observes that religion can be used as an ethnic criterion. The author points out that "a group speaking the same language and belonging to the same race as other groups can be distinguished from them 'ethnically' based on the sole criterion of religion". The author explains that in many countries a number of "nationalities" are defined by their ethnic origin, that is, on an exclusively religious basis. See Ben Achour, op. cit., pp. 350-351.

[30] See in this connection the major study by Capotorti (note 11 above), p. 37 ff. and p. 105 ff. See also Alain Fenet and Gérard Soulier, Les minorités et leurs droits depuis 1789, Paris, L'Harmattan, 1989; Fabienne Rousso-Lenoir, Minorités et droits de l'homme: l'Europe et son double, Bruylant - LGDJ, 1994 and Jean Duffar, "La protection internationale des droits des minorités religieuses", Revue de droit public, 1995, No. 6, pp. 1496-1530, particularly p. 1503 ff.

[31] Some authors (including Capotorti, para. 227; Duffar, loc. cit., p. 1504; and Ben Achour, op. cit., p. 431) question whether there is some duplication between article 18 and article 27 insofar as they both codify, either indirectly or directly, the rights of minorities, with the exception of (see Capotorti) those rights enjoyed by "minority religious communities" as such - religious schools, laws governing property, status of ministers of religion, protection of holy places, etc.

[32] This concerns the making of a distinction between "old" and "new" minorities; see Capotorti, para. 205.

[33] On this subject, legal writers have stated that "article 27 does not protect either isolated individuals or minorities but persons belonging to minorities who have the right, pursuant to article 27, together with other members of their group, ... to profess or practice their own religion"; see Duffar, op. cit., p. 1503, Capotorti, para. 206.

[34] Op. cit., para. 197. The author refers to the draft resolution on the definition of minorities considered by the Sub-Commission at its third session in 1950: "... distinctive population groups possessing racial, religious, linguistic or cultural characteristics different from those of the rest of the population, usually known as minorities" (footnote 73 to para. 197).

[35] Adolfo Stavenhagen, "Les conflits ethniques et leur impact sur la société internationale", Revue internationale des sciences sociales, 1991, No. 127, p. 124; Roland Breton, Les ethnies, Paris, PUF, Que sais-je? 1992, pp. 5-13.

[36] For example, the right to own property (Zalay Banco v. Nicaragua, decision of 20 July 1994); the right to conscientious objection (LTK v. Finland, 9 July 1985; communications Nos. 285/1998, Järvinen v. Finland; No. 666/1995, Fréderic Foin v. France and No. 682/1996, Paul Westerman v. Netherlands) and the right to social welfare (several decisions on the right to unemployment benefits, invalidity pensions, education grants, etc.). According to the Committee, the application of the principle of non-discrimination set forth in article 26 is not restricted to the rights stipulated in the Covenant. See General Comment 18, para. 13.

[37] Unlike a number of authors, we do not think that articles 18 and 27 are duplicative. Article 18 is not just a repetition of the clause prohibiting discrimination on religious grounds set out in article 27 for the benefit of religious minorities, as article 27 deals with the protection of a particular category not of rights but of persons who may, as we have already said, be identified with multiple groups.

[38] The Statute of the International Criminal Court also regards as a crime against humanity persecution against any identifiable group or collectivity on ethnic or religious grounds, (see art. 7, para. 1(h)). Similarly, in armed conflicts, intentionally directing attacks against buildings dedicated to religion is considered by the Statute to be a war crime (art. 8, para. 2 (b) (ix)). Minorities and ethnic and religious groups are thus protected against these three crimes, including crimes not only against people but against property (war crimes).

[39] For a more detailed study of the status of international law on genocide in 1978, see Nicodème Ruhashyankiko, Special Rapporteur, "Study of the question of the prevention and punishment of the crime of genocide", Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/416, 4 July 1978).

[40] See General Assembly resolution 96(I) of 11 December 1946 on the crime of genocide, see also the advisory opinion on reservations to the Convention on Genocide, ICJ Reports 1951, p.23.

[41] See article 4 of the Statute of the International Criminal Tribunal for the Former Yugoslavia and article 6 of the Rome Convention, which reproduce the text of article II of the 1948 Convention.

[42] Ibid.

[43] Joe Verhoeven points out this ambiguity in his article, "Le crime de génocide, originalité et ambiguïté", Revue belge de droit international, 1991, I, pp. 6 to 26; see also Maria Castillo, "La compétence du Tribunal pénal pour la Yougoslavie", Revue générale de droit international public, 1994, pp. 62 to 87, and especially, pp. 69 et seq.

[44] A proposal to include "cultural genocide" in the 1948 Convention was rejected, to much subsequent regret. See Ruhashyankiko, op. cit., paras. 441 to 449; Verhoeven, loc. cit., p. 16.

[45] Prosecutor v. Rodovan Karadzic and Ratko Mladic, consideration of bill of indictment in the framework of article 61 of the Rules of Procedure and Evidence, decision of the Trial Chamber, ICTY, 11 July 1996, cases Nos. IT-95-5-R61 and IT-95-18-R61.

[46] Loc. cit., p. 16. Concerning this aspect, see also conclusions of the Bosnian Government in connection with its complaint against Serbia before the International Court of Justice, concerning the application of the Convention for the Prevention and Punishment of the Crime of Genocide (Bosnia and Herzegovina v. Yugoslavia), Preliminary objections, 11 July 1996, paras. 13 and 14.

[47] As Castillo notes, loc. cit., p.75, the general philosophy underlying instruments on genocide is that the perpetrator must be sought beyond the Governmental veil. Article 5 of the ICTY Statute adopts a definition which covers acts by individuals; see also article 25 of the Statute of the International Criminal Court, which explicitly covers the criminal responsibility of natural persons.

[48] In "De la piraterie au génocide ... Les nouvelles modalites de la repression universelle", Mélanges G. Ripert, t.1, p. 245.

[49] See Castillo, loc. cit., p. 71. The relevant instruments all use the plural when referring to victims of genocide: killing "members" of a group, preventing "births" within the group, forcibly transferring "children" of the group. See article 2 of the Convention of 9 December 1948, article 4 of the ICTY Statute and article 6 of the Statute of the International Criminal Court of 17 July 1998.

[50] See paragraph 8 of the commentary to draft article 17 of the draft Code of Crimes against the Peace and Security of Mankind, report of the International Law Commission on the work of its forty-eighth session (A/51/10, chap. II, p. 2). Legal writers also speak of a "significant section" of the group, see Mr. B. Whitaker, Special Rapporteur, "Revised and updated report on the question of the prevention and punishment of the crime of genocide", Sub-Commission on Prevention of Discrimination and Protection of Minorities (E/CN.4/Sub.2/1985/6, 2 July 1985, para. 29). See also Yves Ternon, L'Etat criminel, les génocides au XX$^{e}$ siècle, Paris, Le Seuil, 1995, pp. 74-76.

[51] Loc. cit., p. 24.

[52] Verhoeven, a proponent of this argument, explains that the number of victims is not without importance, especially in determining the penalty.

[53] On this argument, see Verhoeven, loc. cit., p. 18; see also Stefan Glaser, Droit international pénal conventionnel, Bruxelles, Bruylant, 1970, p. 112; Antonio Planzer, Saint-Gall, Le crime de génocide, 1956, pp. 86 and 93.

[54] Unfortunately, some cases of genocide only reach public opinion through media coverage! As many writers have said, before the event, preparations for genocide are hidden; during the event, its occurrence is denied; after the event, its very nature is denied. This tragic combination can be found in Nazi Germany, Rwanda and Kosovo, where the actual genocide was preceded by political and psychological preparations and a discriminatory process the seriousness of which was hidden from international public opinion.

[55] Prosecutor v. Dragan Nikolic alias "Jenki", consideration of the bill of indictment in the framework of article 61 of the Rules of Procedure and Evidence, decision of the Trial Chamber, ICTY, 20 October 1995, case No. IT-94-2-R-61.

[56] See p. 21, para. 34.

[57] Case of 11 July 1996, cited in note 45 above, p. 61, para. 95. See also Meakic et al. case, 13 February 1995, No. IT-95-4-I, p. 5, paras. 18.1 to 18.3.

[58] See p. 61, para. 94.

[59] Mrksic, Radic, Sljivancanin and Dokmanovic ("Vukovar hospital") case, decision of the Trial Chamber, ICTY, 3 April 1996, case No. IT-95-13-R-61, p. 16, para. 35, Karadzic and Mladic ("Srebrenica") case, decision of 16 November 1995, case No. IT-95-18-R-61, pp. 5-6 and of 11 July 1996 case No. IT-95-5-R-61.

[60] "The specific intent to commit genocide does not have to be clearly expressed" and "… In the case at hand, the intent to destroy in whole or in part a national, ethnical, racial or religious group, which is specific to genocide, may be clearly inferred from the seriousness of the 'ethnic cleansing'", Karadzic and Mladic case, decision of 16 November 1995, pp. 5-6.

[61] Killing members of the group; causing serious bodily or mental harm to members of the group; deliberately inflicting on the group conditions of life calculated to bring about its physical destruction in whole or in part; imposing measures intended to prevent births within the group and forcibly transferring children of the group to another group. Article 4 of the Statute and article 6 of the Rome Convention reproduce the text of article 2 of the Convention of 9 December 1948.

[62] Karadzic and Mladic case, 16 November 1995, p. 60, para. 94; Nikolic case, 20 October 1995, p. 21, para. 34.

[63] Legal writings are unanimous in excluding certain groups: political, sexual, linguistic, economic and social groups.

[64] See Glaser, op. cit., cited by Castillo, p. 71.

[65] Verhoeven, loc. cit., p. 21. For this author, with some exceptions for the concept of "religious" groups, it is impossible to define the others precisely.

[66] Meakic et al. case, 13 February 1995, No. IT-95-4-I, p. 5, paras. 18.1 and 18.3. In the Karadzic case of 11 July 1996, the Tribunal uses the term racial, but without referring to any particular group, note 45, pp. 5 and 6.

[67] Karadzic and Mladic case, p. 61, paras. 94 and 95.

[68] Ibid., p. 9, paras. 30 and 31.

[69] Ibid., p. 60, para. 94; Nikolic case, p. 21, para. 34.

[70] The Kosovar population of Albanian origin seems to fall into one or more of the groups protected by the 1948 Convention and the Statute of the Tribunal, as either an ethnic group, national minority or racial and religious group.

[71] Glaser, op. cit., p. 109.

[72] See Isse Omanga Bokatola, "The United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious and Linguistic Minorities", Rev. Gen. Dr. In. Pub., 1993, pp. 745-765.

[73] This is the case in Europe. See above, concepts used by the International Criminal Tribunal for the Former Yugoslavia (Bosnian Muslim, Bosnian Croat, national group, etc.).

[74] Article 1, paragraph 1 of the Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965 and article 2, paragraph 1 of the Covenant on Civil and Political Rights also apply to non-citizens of a State (see Convention, art. 1, para. 2); hence their protection exceeds that of minorities (in the meaning of article 27 of the Covenant) whose members are citizens of a State.

[75] Article 5, paragraph 1 (c) sets forth the right of "national minorities to carry on their own educational activities...". See also articles 18, paragraph 4, and 27 of the Covenant, which, read in conjunction with the UNESCO Convention, provide an overlap between race and religion with regard to education and teaching.

[76] See article 1 (a). Also see article 1 of the Convention on the Means of Prohibiting and Preventing the Illicit Import, Export and Transfer of Ownership of Cultural Property of 24 April 1972. The Convention recommends that States parties should foster in the members of their armed forces "a spirit of respect for the culture and cultural property of all peoples" (art.7, para. 1).

[77] See Capotorti, op. cit., para. 215.

[78] In this respect, the Declaration of the Principles of International Cultural Cooperation of 4 November 1966, article 1, paragraph 1 of which essentially places minority cultures and the majority culture on an equal footing, stipulates: "Each culture has a dignity and value which must be respected and preserved".

[79] See preambular paragraphs 3 and 7 and articles 1, 14, 29 and 30.

[80] Article 30 is drafted in the same terms as article 27 of the Covenant, except that it makes a distinction between ethnic, religious or linguistic minorities and persons of indigenous origin.

[81] The United Nations and the International Labour Organization (ILO) take this definition as a basis for protecting these peoples. See ILO Convention (No. 169) concerning Indigenous and Tribal Peoples in Independent Countries; chap. 26 of Agenda 21, "Recognizing and strengthening the role of indigenous people and their communities", adopted by the

United Nations Conference on Environment and Development on 20 June 1992; the draft United Nations declaration on the rights of indigenous peoples, adopted by the Sub-Commission on Prevention of Discrimination and Protection of Minorities in its resolution 1994/45 of 26 August 1994 (E/CN.4/1995/2-E/CN.4/Sub.2/1994/56); see also Isabelle Schulte-Tenckhoff, La question des peuples autochtones, Bruylant, LGDJ, 1997.

[82] In a similar vein, see the OAU Convention governing the Specific Aspects of Refugee Problems in Africa of 10 September 1969, which protects refugees against discrimination for reasons of race, religion or membership of a particular social group (arts. 1 and 4).

[83] Compare with article 18, paragraph 3, of the Covenant, under which two conditions must be met.

[84] The American Declaration of the Rights and Duties of Man of 2 May 1948 does not use the term "religion" but "religious faith". Article III of the Declaration provides that: "Every person has the right freely to profess a religious faith, and to manifest and practise it both in public and in private".

[85] The relevance of this protocol to our study lies in its broad definition of a national minority, which refers to "a group of persons in a State who ... (c) display distinctive ethnic, cultural, religious or linguistic characteristics ... (e) are motivated by a concern to preserve together that which constitutes their common identity, including their culture, their traditions, their religion or their language".

[86] However, the term "framework" indicates that the principles embodied in this instrument are not directly applicable in domestic law, and that it is for each member State to ensure they are implemented through its domestic legislation and policy.

[87] In this respect, see the reservations and declarations made by States parties on their conceptions of a national minority, certain of which focus specifically on ethnic groups: see declarations by Austria, Estonia, Germany, Luxembourg, Slovenia and Macedonia.

[88] Here again, the terms do not always have the same meaning and often involve a good deal of relativism, subjectivity or even ulterior motives. To give one example, the definition of race according to skin colour varies greatly between countries and civilizations. A person regarded as white - or black, for that matter - in a particular country is not necessarily regarded as such in another country.

[89] When, of course, the persons concerned belong to the same racial majority (for example, Jehovah's Witnesses or members of the Church of Scientology). This hypothesis also concerns the many minority religions in the world.

[90] As in the case of black or Asian Christians in certain European countries.

[91] See in particular article 1, paragraph 2, and article 6 of the International Convention on the Elimination of All Forms of Racial Discrimination and article 26 of the International Covenant on Civil and Political Rights.

[92] The designations are already controversial: traditional religions in the monotheistic sense as well as Buddhism and Hinduism (but how can these be distinguished from traditional religions in Africa, for example, or those practised by indigenous peoples?); major religions (but what is the criterion for calling them "major"? Is it the number of followers or believers, or is it the age of the religion?).

[93] See, for example, articles 1 and 6 of the 1981 Declaration; see also article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination of 21 December 1965.

[94] For obvious reasons of objectivity, we have drawn our information from cases cited mostly in the periodic reports of the Special Rapporteurs on religious intolerance and on racism, and in the decisions taken by the Human Rights Committee under the Optional Protocol to the Covenant and certain reports of the Commission on Human Rights. Moreover, only the most revealing examples are cited; the fact that one example is cited and another not does not, of course, imply the expression of any opinion on a State's policy concerning discrimination and action to combat discrimination, or on a particular minority or ethnic or religious group.

[95] In India, 82 per cent of the population is Hindu and 12 per cent is Muslim. The Indian Constitution protects the rights of all minorities, whether religious or linguistic.

[96] In Bangladesh, the majority (85 per cent) of the population is Muslim and Bengali. Among the ethnic and religious minorities, most of the Mandis of Mongolian and Chinese-Tibetan origin are Christians. Hindus represent 8 per cent of the population.

[97] According to the Sri Lankan Government, LTTE practises a policy of ethnic cleansing. In Sri Lanka, 72 per cent of the population are of Sinhalese ethnic origin and are Theravada Buddhists. Muslims represent 7 per cent of the population; there are about 1 million Christians spread between the Sinhalese and Tamil communities.

[98] Articles 4.2 and 4.7 of this law provide that "... the State will respect the predominant position of the Buddhist religion in Mongolia" and "... the organized propagation of religion from outside is forbidden".

[99] See also Commission on Human Rights resolution 1999/13 of 23 April 1999.

[100] Article 4 of the Constitution further establishes the dominance of the Islamic religion and "criteria" in every area of social life. See E/CN.4/1996/95/Add.2, paras. 5-6.

[101] The question whether a minority exists does not depend on its recognition by the State but on the objective factors mentioned in article 27 of the Covenant. See also Capotorti, op. cit., para. 204, and Asbjørn Eide (E/CN.4/Sub.2/1990/46, note 15, para. 16).

[102] The Greek Constitution, promulgated "in the name of the holy, consubstantial and indivisible trinity", lays down in article 5 the principle that "the dominant religion ... is that of the Eastern Orthodox Church of Christ".

[103] The black minorities are found in the south of the country; they are Christians and animists and represent about 25 per cent of the population. The Copt minority (numbering 150,000-200,000) is found in the north of the country, which is inhabited by a majority of Arabic-speaking Muslims.

[104] See also Commission on Human Rights resolution 1999/15 of 23 April 1999.

[105] See, in particular, article 12 of the Decree, on the armed forces' duty of "jihad", which raises questions about the role of non-Muslims in the army (see A/51/542/Add.2, paras. 38 and 135). Similarly, article 61 of the Decree, on the application of Shariah law by judges, makes no exceptions for non-Muslims.

[106] The provisions on religious offences (hudud) in the Penal Code of 1991 seem to be applied on a territorial rather than a religious basis, which means that the Shariah can be legally imposed on ethnic and religious groups in the north of the country (see A/51/542/Add.2, para. 44).

[107] Viet Nam is a multi-ethnic (53 ethnic groups) and multi-denominational country: Buddhists (80 per cent), Catholics, Protestants, Muslims, Cao Dai and Hoa Hao.

[108] This article is aimed especially at the restrictions relating to the "State policies" provided for, in particular, by article 4, on the position of Marxist-Leninist ideology and the Communist party of Viet Nam. Moreover, the Penal Code provides penalties for particularly vaguely worded offences that might concern ethnic and religious groups: attempts to undermine national unity, promoting division between religious believers and non-believers (art. 81), propaganda against the socialist system (art. 82), disturbing the peace (art. 198), exercise of superstitious practices or divination and abuse of religion (art. 199).

[109] Protestants have been in Viet Nam since the arrival of American missionaries in 1911, and now number 700,000.

[110] Views of the Human Rights Committee dated 26 March 1990 (Report of the Human Rights Committee, vol. II, A/45/40) on historical inequities and certain more recent events (oil and gas exploration) that threaten the way of life and culture of the Lake Lubicon Band, in violation of the rights of minorities (article 27 of the Covenant); see Revue universelle des droits de l'homme, 28 March 1991, No. 3, p. 69 ff.

[111] Views of the Human Rights Committee dated 26 March 1990, para. 32.2.

[112] Including the denial of access to traditional burial grounds or other special places (Views, para. 3.7); see also ibid., para. 29. 5.

[113] On this question, see the Employment Division v. Smith case, 494 US 972 (1990), cited in document E/CN.4/1999/58/Add.1.

[114] This hypothesis can be applied in the opposite sense, that is, if the group concerned would like to gain acceptance for its own characteristics as a minority when these are not recognized as such by the State. This is the case, for example, of certain Protestant religious associations in the Islamic Republic of Iran (see E/CN.4/1996/95/Add.2, para. 71). It is also the case of the Turks in Germany who wish to have the status of "national minority" like the other two national minorities, the Danes and the Swabians (see E/CN.4/1996/72, para. 23).

[115] The concept of "Arab" or "Arabness", for example, draws more on referents of a cultural nature, which are themselves the product of an ill-defined combination of both religious (that is, basically Muslim) and ethnic backgrounds.

[116] The Special Rapporteur on racism cites a number of acts of anti-Semitic violence, including the desecration of cemeteries in Germany (E/CN.4/1996/72, para. 84).

[117] See E/CN.4/1995/91, para. 93, and A/51/542/Add.2, para. 44. The law on public order and the Islamic dress code is reportedly applied more strictly outside Khartoum (see A/51/542/Add.2, paras. 51 and 140).

[118] See in particular communication No. 94/1981, LSN v. Canada, in "Selected decisions of the Human Rights Committee under the Optional Protocol", vol. 1 (seventeenth to thirty-second sessions), vol. 2, (October 1982 to April 1988); United Nations, New York, 1991, p. 6. See comparable cases in the decisions of the Committee, ibid. (second to sixth sessions), 1988, pp. 10, 38 and 86. The case in point concerns a Canadian citizen of Indian origin who lost, in accordance with Canadian legislation, her Indian status after marrying a non-Indian. The author maintains that this legislation is discriminatory, pointing out than an Indian man who marries a non-Indian woman does not lose his Indian status. The discrimination can, however, be described as aggravated insofar as the legislation in question is not only sexist but also fails to treat Indian citizens on the same footing as other Canadians belonging, from an ethnic point of view, to the majority of the population.

[119] According to the Government of Ghana, the conflict is purely ethnic in nature.

[120] The representatives of the "Nation of Islam" reject these accusations and claim that their disagreements with certain Jewish organizations are political in nature.

[121] The Cao Dai religion is a mixture of Confucianism, Buddhism and Christianity: its 3 million followers are concentrated in the south of Viet Nam.

[122] See Commission on Human Rights resolution 1999/18, of 23 April 1999.

[123] Ibid.

[124] Ibid.

[125] The Special Rapporteur makes the same observation with regard to religion. See, for example, A/51/542, para. 47. Similarly, for racial discrimination, see E/CN.4/1995/15, para. 143.

[126] Human rights and religious liberty: from the past to the future, Philadelphia, Ecumenical Press, 1986, p. vii, cited by Odio Benito, op. cit., para. 156.

[127] As in Bosnia, Croatia and Kosovo.

[128] Thus, in national systems, de jure acts of discrimination are not racial, but religious, in nature. However, to the extent that they affect ethnic groups, they are also racial in nature (in the broad sense).

[129] In the Waldman v. Canada case of 21 October 1999, the Human Rights Committee rejected the State party's argument that the privileged treatment of a religion (a Catholic school) was not discriminatory because it was a Constitutional obligation. The Committee noted that the fact that a distinction is enshrined in the Constitution does not render it reasonable and objective (para. 10.4).

[130] The Nature of Prejudice, Cambridge, Mass., Addison-Wesley, 1954, cited by Odio Benito, op. cit., para. 184

[131] Op. cit., para 187. The author cites the example of the discrimination practised in South Africa, where white South Africans claim that their Christianity justifies the institution of apartheid; see also para. 163.

[132] See Odio Benito, op. cit., paras. 186 and 156ff.

[133] See Commission on Human Rights resolution 1999/82, of 30 April 1999.

[134] See, for example, article 20, paragraph 2 of the Covenant, which provides that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". Note that this refers to measures to be adopted by States in their domestic legislation. See likewise article 7 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination.

[135] This explains many of the gaps and shortcomings of a number of the regional instruments studied.

[136] See Odio Benito, "Historique de la liberté religieuse et de la Déclaration sur l'élimination de toutes les formes d'intolérance et de discrimination fondées sur la religion ou la conviction", Conscience et liberté, 1985, No. 30, pp. 40-48; J.A. Walkate, "La Déclaration des Nations Unies sur l'élimination de toutes les formes d'intolérance et de discrimination fondées sur la religion ou la conviction de 1981: aperçu historique", Conscience et liberté, 1991, No. 42, pp. 7-13.

[137] In the 1989 report cited above, Odio Benito rightly notes that, in practice, the work done for 40 years by the United Nations organs and bodies concerned with human rights has gone beyond this restrictive interpretation of the legal effect of General Assembly resolutions. She adds, significantly, that a refusal to accept United Nations resolutions on human rights places a State in a position that is incompatible with its status as a Member of the United Nations (see report, paras. 193-194).

[138] Note, by way of illustration, the urgent appeals procedure within the framework of the mandate of the Special Rapporteur on religious intolerance, used in particularly serious situations (murder, death threats, etc.) (see A/50/440, para. 54).

[139] It has to be said that the titles of these two special rapporteurs are excessively long and duplicate each other, at least with regard to "intolerance".

[140] Relatively short deadlines for the preparation and submission of reports to the Commission and to the General Assembly, consultations with Governments, administrative secretariat and translation of documents (see A/50/476, para. 17; E/CN.4/1996/72, para. 30).

[141] See, for example, article 20, paragraph 2 of the Covenant, which provides that "Any advocacy of national, racial or religious hatred that constitutes incitement to discrimination, hostility or violence shall be prohibited by law". Note that this refers to measures that should be adopted by States in their domestic legislation. See likewise article 7 of the 1965 Convention on the Elimination of All Forms of Racial Discrimination.

[142] Model legislation was prepared in response to the call by the General Assembly in its resolution 40/22 of 29 November 1985.

[143] The independence of the body to which the victim appeals, the accessibility of the authority and the flexibility of the procedure, the extent to which the authority enjoys the confidence of the public and of the complainant, the competence and power of the body to restore the right, the appeal to a higher body if the complainant is not satisfied, the rapidity of the procedure and the results of the complaint. See Expert Seminar on remedies available to the victims of acts of racism, racial discrimination, xenophobia and related intolerance and on good national practices in this field (Geneva, 16-18 February 2000) (background paper prepared by the secretariat, HR/GVA/WCR/SEM.1/2000/2).

[144] See also A/50/440, para. 22; and Jenö Kaltenback, HR/GVA/WCR/SEM.1/2000/BP.6 (document presented at the seminar referred to in note 143 above).

[145] According to the International Covenant on Economic, Social and Cultural Rights, article 13, paragraph 1, "... education shall... promote understanding, tolerance and friendship among all nations and all racial, ethnic or religious groups...". Similarly, according to article 5, paragraph 1 (a) of the UNESCO Convention against discrimination in education, "... education shall be directed... to the strengthening of respect for human rights and fundamental freedoms; it shall promote understanding, tolerance and friendship among all nations, racial or religious groups".

[146] See also UNESCO's action, referred to by Odio Benito, op. cit., paras. 236-237.

[147] See example from the United States in E/CN.4/1999/58/Add.1, para. 36.

[148] Cited in David Rosenthal, "Racism on Internet: legal and technical issues", document presented at the Geneva seminar referred to in note 143 above (HR/GVA/WCR/SEM.1/2000/BP.4, p. 8). The author reports that some Web sites are designed specifically to teach "racialist thinking" to young children!

[149] Most racist Web sites use United States territory as a "safe haven" (ibid., p. 10).

[150] Ibid., pp. 4 and 23; see also Joël Sambuc, Geneva seminar referred to in note 143 above (HR/GVA/WCR/SEM.1/2000/WP.3).

[151] See, for example, E/CN.4/1997/91/Add.1 (paras. 84-86).

[152] The 1993 Vienna Declaration states that the protection of minorities is essential to achieving what it refers as "democratic security".

## Appendix

# BIBLIOGRAPHICAL REFERENCES

Listed below, in order of appearance in the study, are the references to United Nations publications and documents and other works and periodical articles mentioned in the study or the endnotes.

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WORLD CONFERENCE AGAINST RACISM,
RACIAL DISCRIMINATION, XENOPHOBIA
AND RELATED INTOLERANCE

Preparatory Committee
First session
Geneva, 1-5 May 2000

Item 6 of the provisional agenda

# PREPARATORY MEETINGS AND ACTIVITIES AT THE INTERNATIONAL, REGIONAL AND NATIONAL LEVELS

## Note by the Secretary-General

The Secretary-General has the honour to transmit to the Preparatory Committee the report of the expert seminar on remedies available to the victims of racial discrimination, xenophobia and related intolerance and on good national practices in this field, held in Geneva from 16 to 18 February 2000.

## Annex

# REPORT OF THE EXPERT SEMINAR ON REMEDIES AVAILABLE TO THE VICTIMS OF RACIAL DISCRIMINATION, XENOPHOBIA AND RELATED INTOLERANCE AND ON GOOD NATIONAL PRACTICES, GENEVA, 16-18 February 2000

## CONTENTS

| | | Paragraphs | Page |
|---|---|---|---|
| I. | INTRODUCTION | 1 - 7 | 3 |
| | A. Organization of the seminar | 1 | 3 |
| | B. Participation | 2 | 3 |
| | C. Opening of the seminar and election of officers | 3 - 4 | 3 |
| | D. Agenda | 5 | 3 |
| | E. Documentation | 6 - 7 | 4 |
| II. | THEMES OF THE SEMINAR | 8 - 91 | 6 |
| | A. Racial discrimination in economic, social and cultural life | 8 - 26 | 6 |
| | B. Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous peoples | 27 - 39 | 9 |
| | C. Racism on the Internet: legal and technical questions | 40 - 50 | 11 |
| | D. Common problems linked to all remedies available to victims of racial discrimination | 51 - 59 | 14 |
| | E. Action of national institutions: examples of good practices | 60 - 82 | 17 |
| | F. Reinforcement of regional and international mechanisms | 83 - 91 | 22 |
| III. | RECOMMENDATIONS AND CLOSING OF THE SEMINAR | 92 - 93 | 24 |

## Appendices

I. Recommendations of the Seminar ........ 25

II. List of participants ........ 33

# I. INTRODUCTION

## A. Organization of the seminar

1. In paragraph 65 (b) of its resolution 1999/78, the Commission on Human Rights requested the United Nations High Commissioner for Human Rights to organize an international seminar of experts on the remedies available to the victims of acts of racism, racial discrimination, xenophobia and related intolerance and on good national practices in that field. The seminar was organized and took place from 16 to 18 February 2000 at the Palais des Nations in Geneva.

## B. Participation

2. The list of experts who participated in the seminar, as well as of the States Members of the United Nations and the intergovernmental and non-governmental organizations that were represented by observers, is attached as appendix II to the present report.

## C. Opening of the seminar and election of officers

3. The seminar was opened by Ms. Mary Robinson, the United Nations High Commissioner for Human Rights. In her opening statement, the High Commissioner noted that while a number of international legal documents guaranteed the principle of non-discrimination on the basis of race, that right must be assured by effective recourse procedures and remedies at the national level. While she recognized that Governments had the main responsibility in combating racial discrimination, she noted that national institutions and NGOs had an important role to play. She added that it was important to look closely at new forms of racism, including racist activity on the Internet, and whether new remedies were necessary as a consequence. She also noted that the phenomenon of large-scale migration had frequently been accompanied by increased instances of racism and xenophobia, and that it was important to review the adequacy of recourse procedures in that regard. In concluding, the High Commissioner underlined the importance of disseminating information about good national practices and of coordinating strategies to overcome racial discrimination. The High Commissioner thanked the Government of Switzerland for making a financial contribution for the holding of the seminar.

4. Ms. Virginia Dandan was elected Chairperson-Rapporteur by acclamation.

## D. Agenda

5. At its first meeting, on 16 February 2000, the seminar adopted the following agenda (HR/GVA/WCR/SEM.1/2000/2):

1. Opening session.

2. Election of the Chairperson-Rapporteur.

3. Adoption of the agenda.

Point 1: Racial discrimination in economic, social and cultural life;

Point 2: Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals; migrants; asylum seekers; refugees; minorities and indigenous peoples;

Point 3: Racism on the Internet: legal and technical questions;

Point 4: Common problems linked to all remedies available to victims of racial discrimination;

Point 5: Action of national institutions: examples of good practices;

Point 6: Reinforcement of regional and international mechanisms;

Point 7: Conclusions and recommendations.

4. Closing session.

## E. Documentation

6. The following background papers were prepared for the seminar at the request of the Office of the High Commissioner for Human Rights:

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|---|---|
| HR/GVA/WCR/SEM.1/2000/2 | Background paper prepared by the Secretariat; |
| HR/GVA/WCR/SEM.1/2000/BP.1 | Racial discrimination in economic, social and cultural life: background paper prepared by Mr. Luis Valencia Rodriguez; |
| HR/GVA/WCR/SEM.1/2000/BP.2 | Racial discrimination and vulnerable groups: some instances of light and shadow: background paper prepared by Ms. Virginia Dandan; |
| HR/GVA/WCR/SEM.1/2000/BP.3 | Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous people victims of racial discrimination: background paper prepared by Mr. Asbjørn Eide, |
| HR/GVA/WCR/SEM.1/2000/BP.4 | Racism on the Internet: legal and technical: background paper prepared by Mr. David Rosenthal; |

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|---|---|
| HR/GVA/WCR/SEM.1/2000/BP.5 | Common problems linked to all remedies available to victims of racial discrimination: background paper prepared by Mr. Theodor van Boven; |
| HR/GVA/WCR/SEM.1/2000/BP.6 | Action of national institutions against racism: examples of good practices in Eastern Europe: background paper prepared by Mr. Jenö Kaltenback; |
| HR/GVA/WCR/SEM.1/2000/BP.7 | Action of national institutions: examples of good practices: background paper prepared by Mr. N. Barney Pityana; |
| HR/GVA/WCR/SEM.1/2000/BP.8 | The Discrimination Ombudsman in Sweden: background paper prepared by Mr. Frank Orton; |
| HR/GVA/WCR/SEM.1/2000/BP.9 | Reinforcement of international and regional mechanisms for individual complaints of racial discrimination: background paper prepared by Mr. Régis de Gouttes; |
| HR/GVA/WCR/SEM.1/2000/BP.10 | Hate on the Internet and the American legal system: background paper prepared by Mr. Mark Potok. |

7. Working papers were also prepared by several participants and organizations. They were the following:

| | |
|---|---|
| HR/GVA/WCR/SEM.1/2000/WP.1 | Renforcement des mécanismes régionaux et internationaux pour un meilleur suivi du contenu de l'éducation, prepared by l'Association mondiale pour l'école instrument de paix (French only) |
| HR/GVA/WCR/SEM.1/2000/WP.2 | Les moyens d'action des victimes contre la discrimination dans l'éducation: la problématique de la séparation des classes entre nationaux et étrangers, prepared by the Swiss Federal Commission against Racism (French only) |
| HR/GVA/WCR/SEM.1/2000/WP.3 | Le racisme sur Internet: quelques questions juridiques et techniques, prepared by the Swiss Federal Commission against Racism (French only) |
| HR/GVA/WCR/SEM.1/2000/WP.4 | International law: a remedy for environmental racism: an example: case of the United States, prepared by the Earthjustice Legal Defense Fund (English only) |

| | |
|---|---|
| HR/GVA/WCR/SEM.1/2000/WP.5 | An independent body to redress complaints on discrimination based on race, colour, national or ethnic origin or religion, prepared by the Danish Board for Ethnic Equality (English only) |

## II. THEMES OF THE SEMINAR

### A. Racial discrimination in economic, social and cultural life

8. At the first meeting, on 16 February 2000, Mr. Luis Valencia Rodriguez introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.1). He referred to the International Convention on the Elimination of All Forms of Racial Discrimination and indicated that that international instrument presupposed the existence of economic, social and cultural rights.

9. In the three decades of its existence, the Committee on the Elimination of Racial Discrimination, the monitoring body established under the Convention, had reached the conclusion that no State was immune to racially discriminatory practices, which often emerged as a reflection of traditions or age-old prejudices or as a result of the introduction of policies or ideologies based on chauvinistic nationalism. Other factors, however, also contributed to racial discrimination in the exercise of economic, social and cultural life, including socio-economic underdevelopment, segregation experienced by indigenous populations, racial conflicts giving rise to violence, and xenophobia against minority groups, undocumented immigrants, refugees and displaced persons.

10. Mr. Valencia Rodriguez noted that racial discrimination in housing remained a major problem, frequently resulting in the exclusion of ethnic minorities, migrants, refugees, the landless and indigenous communities, inter alia, from their right to adequate housing. Racial discrimination in the sale or lease of housing was practised by residents in neighbourhoods who do not want to live side by side with persons of a different racial group. Although international law and the national laws of many countries prohibited such discrimination, frequently such legislation was not enforced and individual acts of discrimination were often hard to detect, prove and punish.

11. Concerning racial discrimination in the field of health, Mr. Valencia Rodriguez noted that the Constitution of the International Health Organization stated that "The enjoyment of the highest attainable standard of health is one of the fundamental rights of every human being without distinction of race". He added that the Committee on the Elimination of Racial Discrimination made inquiries concerning racial discrimination in health care when it examined reports.

12. Concerning racial discrimination in employment, he noted that the issue of equal pay for equal work had been aggravated on a racially discriminatory basis as a result of the globalization process. That process had created labour competition in domestic markets, with nationals and long-term residents wishing to retain their prerogatives while migrant workers were prepared to work under less favourable conditions. He also argued that racial discrimination in employment

occurred because some employers preferred to hire workers of a certain racial type, either because of discriminatory attitudes of the employer, or because of a perception by the employer that customers had a preference for dealing with employees of a certain racial group.

13. Concerning education, Mr. Valencia Rodriguez noted that segregated housing patterns led to discrimination in educational establishments since it reduced the possibility of contact between pupils belonging to different racial or ethnic groups. He also argued that racially discriminatory attitudes of parents often resulted in a concerted effort to ensure that their children did not attend schools which had a large number of pupils belonging to minority ethnic groups.

14. Regarding racial discrimination in public establishments, he remarked that in many countries there were establishments, both public and private, which excluded persons belonging to racial or ethnic minority groups. Frequently that occurred in the context of invoking a consideration other than race or ethnic origin, such as clothing, personal appearance or language, even though the real reason was a racially discriminatory one. It occurred because anti-discrimination legislation was lacking, inadequate or not complied with.

15. In addressing racial discrimination in the field of culture, Mr. Valencia Rodriguez emphasized that Governments were under a duty not only to respect cultural events of all groups, but also to provide members of communities with adequate facilities to participate effectively in cultural activities. That right was more important in the case of minority groups for whom cultural events were essential to the preservation of their identify and particular characteristics.

16. In concluding, Mr. Valencia Rodriguez indicated that rights to housing and health on a non-discriminatory basis had not been accorded sufficient attention by the authorities of many States. He added that that type of discrimination was frequently linked to racial discrimination in employment. Remedies available to victims of racial discrimination included recourse to national institutions, reporting of violations to law enforcement officials, prompt and effective action by bodies responsible for the administration of justice, educational activities that focused on curbing and eliminating racial discrimination, and the activities of the media, which should promote understanding and tolerance.

17. Ms. Virginia Dandan introduced her paper (HR/GVA/WCR/SEM.1/2000/BP.2) also at the first meeting, on 16 February 2000, from the perspective of a member of the Committee on Economic, Social and Cultural Rights. She said that it was relatively rare to find in the reports that were submitted to her Committee an absence of laws or remedies to protect victims of racial discrimination. The principal problem, in her experience, was the lack of effective application of laws and remedies.

18. Ms. Dandan emphasized in particular the problems that refugees and asylum-seekers faced, and the potential for racism against them. She added that female refugee claimants should be handled with special sensitivity, and that emphasis should be put on developing a better understanding of the ways and means by which women are subjected to discriminatory treatment.

19. She also pointed out that vulnerable groups such as refugees and asylum-seekers, migrants, minorities and indigenous peoples were frequently ignorant of their legal rights, and that situation was frequently compounded by a lack of knowledge of the majority language. She advocated that human rights education programmes should have as wide a coverage as possible, in order to include most vulnerable groups.

20. Concerning particular problems experienced by indigenous peoples, she said that health and the criminal justice system remained two very large problems, and that remedial measures, including in particular adequate information dissemination concerning their rights, should be more widely available.

21. In considering the question of the effectiveness of remedies, Ms. Dandan was of the view that national human right institutions are frequently better equipped than courts in determining acts of discrimination, but that in many cases they do not offer effective guarantees of redress. She suggested that there should be better coordination between national human rights institutions and the courts to ensure that guarantees provided for by law are effectively made available.

22. Ms. Dandan also expressed the view that redress provided for by laws and other measures was frequently inaccessible or selectively applied. She suggested that remedies should be made accessible to all victims of racial discrimination and legal protection should be implemented with greater diligence.

23. In concluding, Ms. Dandan expressed her view that court decisions or government policies rarely made reference to international human rights standards, thus limiting the recognition of those norms in domestic law and their knowledge by the public. She recommended that Governments should take action to bring their national laws into conformity with human rights treaty obligations and that special training courses should be provided to judges and government officials.

24. In the discussion which followed, Mr. Abdel Fatah Amor, Special Rapporteur on religious intolerance, argued that often racial discrimination was aggravated by religious intolerance and xenophobia. National identity was frequently based on race and religion and was used as a basis for unity, which could compound racial discrimination towards minorities, hence the phenomena of Islamophobia, Arabophobia and Christianophobia, present in certain countries.

25. Mr. Eide noted that globalization was affecting the way racial discrimination was practised. Racial discrimination was frequently used as a tool in a competition for resources. Mr. Valencia Rodriguez expressed his view that globalization was exacerbating existing inequalities and making the protection of human rights more difficult.

26. Ms. Doris Angst Yilmaz, Director of the Federal Commission against Racism (Switzerland) made reference to her working paper (HR/GVA/WCR/SEM.1/2000/WP.2) and commented on the issue of immigration and education. She argued that public schools reinforce democracy and tolerance. Schools should practice integration, but have bilingual education if there are children from abroad. She also argued strongly against separate classes based on reasons of culture and ethnic origin, which was very dangerous, segregated teaching was a synonym of discrimination.

### B. Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous peoples

27. At the second meeting, on 16 February 2000, Mr. Asbjørn Eide introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.3) and stated his view that one of the most fundamental issues was whether the judiciary, law enforcement agencies, and - where they existed - ombudspersons, human rights commissions and other public bodies - were genuinely impartial. He concluded that the record was mixed at best and that a pervasive problem was that the police and other security forces were often biased.

28. With regard to indigenous peoples, he noted that at the national level, the individual rights of indigenous peoples were in principle protected because they were entitled to all the rights of citizens in the country in which they lived, since they were usually citizens as well. Indigenous peoples were, however, frequently in a vulnerable position owing to a lower level of literacy and education and a weaker economic position in society, at least partially as a result of present or past discrimination.

29. Mr. Eide remarked that indigenous peoples were also afforded protection under the International Convention on the Elimination of All Forms of Racial Discrimination, at least in those States which had ratified that Convention. The Convention also allowed for special affirmative measures to be taken to ensure adequate development and protection of the rights of indigenous peoples, although such measures were to be discontinued when equality had been achieved.

30. In addition, indigenous peoples were afforded protection under the International Covenant on Civil and Political Rights. Under article 27 of that Covenant they were entitled to all the rights established under international law for persons belonging to national or ethnic, religious or linguistic minorities. As such they could not, inter alia, be denied the right to enjoy their own culture, to practise their own religion or to use their own language. Indigenous peoples were also protected by ILO Convention No. 169 Concerning Indigenous and Tribal Peoples in Independent Countries, which set out important protection with regard to land rights and autonomy, education, employment, training, social security, health and general policy towards indigenous peoples. He also mentioned the draft declaration on the rights of indigenous peoples which had been adopted by the Sub-Commission on Promotion and Protection of Human Rights and was currently under consideration in the Commission on Human Rights.

31. Mr. Eide then discussed remedies available to national, ethnic or linguistic minorities. Regarding institutions which administered remedies for minorities, it was important for the minorities themselves to be represented in such institutions. He then addressed the issue of remedies for collective rights, rights applicable only when enjoyed in the community of others. Remedies for collective rights were weak, mainly because of the reluctance of majorities fully to accept such rights. He made reference to international instruments protecting minority rights, including article 27 of the International Covenant on Civil and Political Rights, the United Nations Declaration on the Rights of Persons Belonging to National or Ethnic, Religious or Linguistic Minorities of 1992 and the European Framework Convention on the Rights of National Minorities of 1994.

32. In his discussion of migrants, Mr. Eide drew a distinction between regularized versus unaccounted and trafficked migrants. Regarding regularized minorities, he argued that on many occasions migrant workers suffered de facto discrimination even when protective legislation had been adopted. As a result, Governments had frequently been requested to put into effect policies relating to training, health care, housing, education and cultural development for migrants. He remarked that migrant workers faced a threat which was common to all aliens: the threat of expulsion which had serious consequences for their sense of security. International protection for migrants was provided in ILO Convention No. 97 (revised) on Migration for Employment and ILO Convention on Migrant Workers (Supplementary Provisions) (No. 143), but noted that neither had been widely ratified. He further noted that the International Convention on the Protection of the Rights of All Migrant Workers and Members of Their Families, adopted by the General Assembly in 1990, provided more extensive rights than the ILO Conventions, but had not yet entered into force because of an insufficient number of ratifications. At the European level, protection existed under article 19 of the Social Charter of the Council of Europe and the European Convention on the Legal Status of Migrant Workers (1977), but in both cases protection was limited to nationals of a contracting State Party authorized by another contracting State Party to reside in its territory to take up paid employment.

33. Mr. Eide said that unaccounted for and trafficked migrants faced a particularly difficult situation in that if they complained to the authorities of illegal exploitation they risked being expelled as illegal immigrants. Expulsion might also put them in difficult circumstances in their home country, particularly if they had been forced into prostitution or criminal activities. He argued that remedies should be devised which would bring them out of their condition of prostitution or other criminal or degrading circumstances and allow them to obtain education and adequate jobs. He also suggested that States should provide refuge and protection to victims of sexual exploitation and repatriate those who wished to return. Remedies should be developed which would make it possible for such persons to reveal their exploitative circumstances without risk, including the identification of the persons who engaged in exploitive trafficking.

34. In his comments about refugees, Mr. Eide said that there were two particularly serious problems: their situation while in refugee camps and the threat of expulsion. In some refugee camps there was inadequate food and housing, a breakdown of family and social structures, the loss of meaningful daily activity and, sometimes, a high rate of sexual and domestic violence against women and girls. It had been reported that in some cases neither the Office of the United Nations High Commissioner for Refugees (UNHCR) nor the Government concerned was able or willing to address those issues and that perpetrators of crimes were frequently not prosecuted and victims were not given meaningful compensation, if any at all.

35. Mr. Eide also briefly addressed the issue of racial discrimination in access to citizenship and the issue of the increase in the percentage of non-citizens under detention or imprisonment in industrialized countries. He argued that the denial of access to citizenship was de facto frequently directed against ethnic minorities, even when the legislation did not so mandate. The absence of clear international norms on the right to citizenship complicated the problem considerably. With respect to the issue of increased rates of detention, he argued that while non-citizens might actually be involved in drug trafficking and other criminal activities, the very fact that many non-citizens were visibly different made them more easily singled out for suspicion and degrading treatment. The latter circumstance might in fact lead to criminal

activity. Polite treatment by public authorities and law enforcement agencies might in itself be a crime prevention measure, which underscored the need for effective action whenever public authorities behave in a racially discriminatory manner.

36. In the discussion which followed, Mr. Maurice Glèlè Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance, drew particular attention to the situation of asylum-seekers in camps and was of the view that more needed to be done to improve their situation.

37. Mr. Abdelfattah Amor, Special Rapporteur on religious intolerance, expressed his view that the remedies available to non-nationals were, in many cases, virtually non-existent. Even if there were recourse procedures, non-nationals were usually unaware of them.
Mr. Valencia Rodriguez added that the situation of illegal immigrants was a vicious cycle. Because of the numerical limitations on immigration, many immigrants avoid those rules by coming to a State as tourists and staying on to look for work. In such a situation they had virtually no legal rights or protection. If they were caught, they were frequently put in prison or expelled, or both.

38. A representative of the non-governmental organization Earthjustice Legal Defense Fund made reference to the working paper submitted by his organization on environmental racism (HR/GVA/WCR/SEM.1/2000/WP.4). He argued that environmental discrimination could be an aggravating factor in situations of racial discrimination and requested that the environment should be discussed in the context of racial discrimination, just as employment, housing and other subjects were discussed.

39. A representative of the non-governmental organization Penal Reform International argued that those in detention or in prison should also be considered to be a vulnerable group. That group was frequently subject to a double penalty: they went to prison and then were often expelled.

## C. Racism on the Internet: legal and technical questions

40. At the third meeting, on 17 February 2000, Mr. David Rosenthal introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.4) and said that there were a number of legal and technical reasons why it had been so difficult to combat objectionable speech and activities on the Internet, even though it was illegal in many countries to publish racist speech. He summarized his findings as follows:

(a) Technology-only solutions were unlikely to solve the problem of racist content on the Internet, but could help to shield certain groups of users from a portion of objectionable and illegal materials available and also assist in identifying the people offering such material;

(b) In a number of countries it was possible to take legal action against persons who were supporting racist content by providing the Internet infrastructure necessary to access or spread such illegal content. However, such action against Internet providers was problematic for several reasons and should not be regarded as a viable, long-term solution unless it was focused against providers acting at the source of the illegal content, i.e. the Web site hosting provider;

(c) In some countries, racist and hate speech was protected by the right of freedom of speech and therefore might be freely published on the Internet. While in other countries such racist hate speech was regarded as a criminal offence, it was not possible for prosecutors in those countries to prosecute publishers of illegal online-content at its source because it originated from countries protecting hate speech by legal provisions guaranteeing freedom of speech;

(d) Self-regulatory schemes would not be able to stop any significant portion of racist content on the Internet, because of the decentralized structure of the Internet, unless codes of conduct were accepted and strictly followed by all major and international providers, including those telecommunications companies providing Internet connectivity to rogue providers specializing in hosting racist Web sites;

(e) Self-regulation was not an effective solution to the problem since the delicate decisions were passed on to the industry. Also, self-regulation schemes had some drawbacks since they lacked democratic justification, due process guarantees and supervision.

41. Mr. Rosenthal suggested the following strategies that could be used for combating and prosecuting racist activities on the Internet:

(a) Make self-regulation mandatory. Although a notable number of providers already forbade entities which published hate or racist speech from using their infrastructure, other providers allowed such use;

(b) Prosecute company executives of Internet providers allowing their infrastructure to be used to publish hate or racist speech when they were outside their own countries which protected such speech and within the jurisdiction of other countries which criminalized such speech;

(c) Provide a "safe haven" for providers who took part in a self-regulation scheme by shielding them from legal action as long as they acted within the parameters of the standard that was agreed upon;

(d) Persuade providers, including hosting, connectivity and domain-name providers, to obey a no-racism policy, including by convincing large corporations and other institutions to make such a no-racism policy a precondition of doing business with such providers;

(e) Support legal and political anti-hate initiatives;

(f) Limit racist speech geographically: providers could be either requested or mandated to limit access to racist speech to those countries which protected such speech under their freedom of speech guarantees;

(g) Require content identification which would allow the detection and filtering of racist speech more easily;

(h) Pursue civil actions against persons engaging in racist and hate speech.

42. Mr. Rosenthal indicated that any solution would have to satisfy diverging legal and political points of view and would necessarily result in compromise. He emphasized that, in any case, it would be important to study the effects of the methods described above in depth, since they could set dangerous precedents or under some circumstances could be abused by anti-democratic regimes for other purposes.

43. At the third meeting, on 17 February 2000, Mr. Mark Potok introduced his paper on hate on the Internet and the American legal system (HR/GVA/WCR/SEM.1/2000/BP.10), and gave an overview of the growth of racist hate speech on the Internet and the position of the courts in reaction to that development. He noted that whereas before substantial effort and money had been required to produce and distribute racist pamphlets that might reach several hundred people, today with a $500 computer and negligible other costs, the same hate group could set up a well-produced Web site targeted at a potential audience in the millions. He claimed that the first true hate site, Stormfront, had been established in March 1995, and that it had been followed by a veritable explosion of hate sites which today in the United States numbered about 350. The approach of some hate sites had become less crude and more sophisticated in an attempt to reach out to university students. Other hate sites had incorporated entertainment features such as arcade-style games, chat rooms, bulletin boards, music and real-time videos. He added that a growing number of hate sites featured extremely racist and violent lyrics. Such music was normally not available in retail record shops, but it was offered for sale by racist hate sites - some 50,000 CDs of that type were sold annually in the United States. That kind of music could very effectively reach young people.

44. Mr. Potok said that the United States Supreme Court had issued a decision in June 1997 which indicated that the constitutional protection of freedom of speech was applicable to the Internet. The protection accorded was very broad and closer to that accorded to print media than broadcast media. The protection of print media did not permit prior censorship and allowed broad freedom to print virtually anything short of criminal threats, usually in the form of "incitement to imminent lawless action", or materials within the narrow legal definition of obscenity. Libel and fraud laws were nevertheless applicable. The broadcast media were more closely regulated in the United States because the courts had found that the public had an interest in the airwaves being regulated because of the limited number of broadcast frequencies available and the "invasive" nature of radio and television, i.e. a listener or viewer could be exposed to unexpected material. In its March 1997 decision, the United States Supreme Court had found the Internet to more closely resemble print media, seeing it as a "vast democratic forum" and not finding it "invasive" by reasoning that users rarely encountered objectionable material by accident and that such content was normally preceded by warnings.

45. In spite of that broad protection by the courts, Mr. Potok reviewed a number of cases in which the courts had found violations of the law by persons who had made threats over the Internet. He mentioned a case in September 1996 where a former student had sent an e-mail message to 62 Asian students which said, in part, "I personally will make it my life career to kill everyone of you personally. OK? That's how determined I am." He also mentioned a similar case in 1998 when the federal Government had successfully prosecuted the sender of an anti-Hispanic e-mail death threat sent to 67 students and employees of another university by an Asian-American student, as well as other cases involving threats of violence or death directed at

specific individuals. In one case involving implicit death threats on a Web site against doctors who provided abortions, the plaintiffs, an abortion rights group and several physicians who performed abortions, were awarded $107.9 million in a civil case.

46. Mr. Potok then reviewed legislative initiatives to address racist hate sites. He mentioned an initiative at the federal level, unsuccessful to date, to force public libraries to use Internet filtering software capable of screening out hate and pornography sites on computers used by children; to require Internet service providers to offer such software to their customers free or at cost; and to make it a crime to "teach or demonstrate" how to make explosives and other destructive devices. He also cited the case of the state of Arizona, which had passed a law in 1999 mandating that public schools and libraries use filtering software. The institutions concerned would be required either to put such software on their computers or buy Internet access from providers that provided it.

47. Mr. Potok argued that software designed to filter out hate sites was unfortunately not very effective. It was both under- and over-inclusive and required a very large force of programmers and monitors. He also was of the view that it was unrealistic to think that parents could prevent their children from having access to the Internet or to provide the level of surveillance necessary to prevent them from using hate sites. He concluded that the most effective way to fight racism on the Internet was by education, both by parents and by schools. Ideas and falsehoods need to be combated with other ideas and facts. He warned that ignoring social ills like racism was not the solution to make them go away, but rather was a sure way to guarantee the spread of hate.

48. In the discussion that followed, Mr. Shimon Samuels, the European Director of the Simon Wiesenthal Center provided a brief explanation of the work of his organization and what it was doing to monitor racist hate speech on the Internet. Mr. Eide remarked that there was a great danger when human rights activists involved in combating racism were identified by name and address on the Internet and that issue should be addressed by the World Conference against Racism. A representative of the Government of Turkey stated that a number of international instruments prohibited racist speech and that that was applicable to the Internet. A representative of Portugal stated that hate speech should be criminalized.

49. Ms. Jöel Sambuc, Vice-Chairperson of the Federal Commission against Racism (Switzerland) referred to her working paper (HR/GVA/WCR/SEM.1/2000/WP.3) and stated her view that racist activity on the Internet should be subject to the same rules that were applicable to other forms of racist activities. A number of international instruments which made racist activities illegal were equally applicable to such activities when they took place on the Internet.

50. A representative of the non-governmental organization Save the Children advocated that the World Conference against Racism should give special attention to children and young people. They were often targets for recruitment by the far right and hate groups.

### D. Common problems linked to all remedies available to victims of racial discrimination

51. At the fourth meeting, on 17 February 2000, Mr. Theodor van Boven introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.5) by stating that while remedies for the victims of

racial discrimination were the principal responsibility of States, it was important that international cooperation and international monitoring be used as supplementary tools, especially with a view to ensuring that national measures met the requirements of relevant international standards. In that regard, he mentioned the international norms contained in the International Convention on the Elimination of All Forms of Racial Discrimination, and the relevance of article 6 thereof, which dealt with effective protection and remedies, as well as just and adequate reparation or satisfaction. However, in law and in actual practice, effective remedies were scarce or unavailable where victims belonged to the most destitute and marginalized groups of society.

52. There were a number of requirements that deserved special attention to ensure the efficiency of recourse procedures, notably:

(a) Easy accessibility, especially for those likely to be victims of racial discrimination, for both citizens and non-citizens, for individuals as well as groups;

(b) Initiation of complaints should be simple and flexible and should be available to victims and, as appropriate, authorized public agencies or third parties;

(c) Dissemination of information concerning the availability of remedies, including recourse procedures, should be widespread;

(d) Investigations should cover individual cases, as well as situations which indicated a pattern or practice of racial discrimination;

(e) All stages of the procedures should be expeditiously handled;

(f) Interim measures should be ordered to avert or prevent irreparable damage;

(g) Legal aid and assistance should be provided for victims of racial discrimination and, where appropriate, the services of an interpreter should be made available;

(h) Reparation should be awarded for material and moral damage and suffering;

(i) The impartiality and independence of organs dealing with complaints should be assured.

53. Mr. van Boven also referred to the role of specialized bodies in combating racial discrimination and indicated the importance of certain factors, including their composition, independence, accountability and accessibility. He then mentioned some of their functions and indicated their potential preventive and remedial effects:

(a) Monitoring the content and effect of legislation and executive acts and making proposals, where necessary, for improving legislation;

(b) Advising the legislative and executive authorities with a view to improving regulations and practice;

(c) Providing aid and assistance to victims, including legal aid;

(d) Having recourse to the courts or other judicial authorities as appropriate;

(e) Hearing and considering complaints concerning specific cases and seeking amicable settlements or binding and enforceable decisions;

(f) Providing information and advice to relevant bodies;

(g) Issuing advice on standards of anti-discriminatory practice in specific areas;

(h) Promoting and contributing to training of certain key groups;

(i) Promoting the awareness of the general public on issues of racial discrimination.

54. Mr. van Boven then addressed the types of remedies available and made reference to the draft Basic Principles and Guidelines on the Right to Reparation for Victims of Gross Violations of Human Rights and International Humanitarian Law. The fundamental types of remedies were the following:

(a) Restitution, including the restoration of liberty, family life, citizenship, return to one's place of residence, and restoration of employment or property;

(b) Compensation for any economically assessable damage resulting from physical or mental harm, lost opportunities, material damage and loss of earnings, harm to reputation or dignity, and costs required for legal or expert assistance, medication and medical services;

(c) Rehabilitation, including medical and psychological care, as well as legal and social services;

(d) Satisfaction and guarantees of non-repetition aimed at (i) cessation of continuing violations; (ii) verification of facts which should be fully and publicly disclosed; (iii) an official declaration or judicial decision restoring the dignity, reputation and legal rights of the victim; (iv) apology, including public acknowledgement of the facts and acceptance of responsibility; (v) judicial or administrative sanctions against persons responsible for the violations; (vi) commemoration and paying of tribute to the victims; (vii) inclusion in human rights training and in history books of an accurate account of wrongs committed; and (viii) various policies and measures to avert the recurrence of violations.

55. Mr. van Boven then argued that most patterns and practices of racial discrimination were linked to structural patterns of injustice which required structural solutions. Victims of racial discrimination were frequently the most underprivileged; they lacked education, were ignorant of the law and they mistrusted the courts. He also mentioned the special situation of undocumented workers who, even if they were aware of any remedies, feared intimidation, retaliation or expulsion.

56. He also made reference to the victims of trafficking, and in particular trafficked women and children. In addition to racial discrimination, such persons might be subject to physical and psychological violence, starvation, forced use of drugs and alcohol, burning with cigarettes, rape, isolation in dark rooms, being beaten and threats to themselves or their families. Remedies were hardly of any avail as national policies frequently criminalized the trafficked victims rather than the traffickers.

57. Mr. van Boven also addressed the issue of collective rights and affirmative action in reference to the situation of peoples who had been victimized over a period of years, or even centuries. He made reference to the victims of the slave trade and their descendants, indigenous peoples who had been marginalized and who had lost most of their land rights and rights relating to natural resources and the protection of their environment, and the situation of the Roma.

58. He argued that when collective rights were involved, the lodging of individual claims with a view to obtaining reparation appeared to be of limited utility. More effective results were possible through taking special measures to provide opportunities for self-development and advancement to groups which, following a long period of persistent racial discrimination, had been denied such opportunities. In the context of indigenous peoples, he referred to the General Recommendation XXII, adopted by the Committee on the Elimination of Racial Discrimination, and underlined the importance of States recognizing and protecting the rights of indigenous peoples to own, develop, control and use their communal lands, territories and resources, and, when they had been deprived of them without their free and informed consent, of taking steps to return those lands and territories. General Recommendation XXII provided that if that was not possible, the right to restitution should be substituted by fair compensation, which should as far as possible take the form of lands and territories.

59. In the discussion which followed, Mr. Valencia Rodriguez argued that public awareness of remedies was frequently lacking and that States should take additional measures to enhance public awareness. Mr. Eide stated his view that national laws needed to be adapted to provide better remedies for violations of economic, social and cultural rights. He added that a focus on remedies other than those of a judicial character was also important.

### E. Action of national institutions: examples of good practices

60. At the fifth meeting, on 18 February 2000, Mr. Barney Pityana introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.7) by noting that national institutions had evolved into key instruments for the development and application of human rights. That had increasingly been accepted by the international community in the 1990s. In the future, combating racial discrimination would be more difficult as it would be expressed less and less in crude forms of colour discrimination, but rather would be combined with class and other material conditions. He also argued that strategies of denial of racism had become more elaborate. Frequently a different meaning was given to a set of facts to avoid an acknowledgement of racism.

61. In discussing his own country's experiences, he said that the South African Human Rights Commission had been inaugurated in October 1995. The powers of the Commission included investigation and reporting on the observance of human rights as well as the power to take appropriate steps to secure appropriate redress when human rights had been violated.

62. Mr. Pityana recalled that the South African Human Rights Commission had convened a national conference on human rights in May 1997 at which the following proposals had been made:

(a) The Government should ratify the International Convention on the Elimination of All Forms of Racial Discrimination;

(b) The Government should enact legislation declaring all forms of racism and racial discrimination an offence punishable by law;

(c) The Government should establish a monitoring mechanism on racism in the police, prisons, civil service and the courts;

(d) The South African Human Rights Commission should institute a National Racism Barometer and publish details of anti-racism practice in schools, the civil service, commerce and industry, and report regularly on the index of racism in society;

(e) The Commission should establish a hotline to offer counselling to victims of racial discrimination;

(f) All public and private institutions should be required to undertake an annual racism audit by an independent evaluator;

(g) All institutions participating in State tenders should satisfy the racism audit or the equity audits required under the Employment Equity Act, 1998.

63. Mr. Pityana noted that subsequent to those proposals, the Government of South Africa had ratified the International Convention on the Elimination on All Forms of Racial Discrimination and that the South African Human Rights Commission had cooperated with the Government in preparing equality legislation. The Commission had undertaken a national survey on racial discrimination and integration in schools and a national inquiry into racism in the media. The Commission had also been involved in a campaign to raise public awareness about immigration and refugee policy, and to inform the public and immigrants, asylum-seekers and refugees about their rights. He added that the Commission planned to establish a national institution for education and training in human rights.

64. In his concluding remarks, he said that a national institution straddled the divide between government and society. Although a national institution frequently had quasi-judicial powers and should have enough power to carry out its functions, in his opinion it was important that its recommendations should be only advisory in character and that it should not try to be a substitute for the courts and impede access to the courts by those who wished to see redress in a judicial forum.

65. Also at the fifth meeting, on 18 February 2000, Mr. Frank Orton introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.8) on the Discrimination Ombudsman (DO) in Sweden . The DO had three tasks: to take on individual cases, to present opinions on legislative matters and to try to change public opinion and make it more tolerant. The competence of the DO was not

limited to public administration, or only to employment matters, but included society at large. The only exclusion from the competence of the DO was the privacy of the family. The DO, however, had very limited legal powers which meant that the tools at the disposal of the DO were essentially good ideas and persuasive arguments, as well as criticism. Those tools were effective, as most persons and institutions would prefer to avoid being referred to as discriminatory, racist or xenophobic.

66. Mr. Orton indicated that there were three groups in Sweden which could be referred to as ethnic minorities: the Saami who resided in the north of the country and who had traditionally engaged in reindeer-herding; the Roma population; and a special group of Finns who lived in a particular area in northern Sweden. With respect to the Saami, he noted that the DO had tried to promote knowledge about the condition of the Saami and their culture, including through the school curriculum, in museums and in public libraries. There had also been an effort to promote higher self-esteem among the Saami with respect to their language, their traditional clothes and their culture. The DO had acted to promote a dialogue between the Saamis and various agencies and associations in Swedish society and also to encourage the Saami to cooperate with other groups in Sweden having similar interests, as well as with indigenous peoples in other countries.

67. Concerning the Roma, the DO had undertaken a long-term strategy of confidence building, after coming to the conclusion that the Roma had an ingrained mistrust of public agencies and institutions. The DO had tried to gain a better understanding of the needs of the Roma and what was essential to them in terms of preserving their culture, their language and their identity.

68. Mr. Orton then turned to the issue of immigrants, which generated by far the largest portion of the workload of the office of the DO. Immigrants constituted approximately 11 per cent of Swedish society and were not a homogenous group: around one third came from other Nordic countries, about one third from other European countries and about one third from the rest of the world. Some were well educated or had specialized skills, while others did not; some had been in Sweden for a long time, while others had been there a short time.

69. The DO had adopted a multi-faceted strategy to address the problems experienced by immigrants, including a focus on education and awareness raising, as well as mobilizing good forces in society to help combat racism, e.g. unions, employers' organizations, commercial associations, the military, the church. Mr. Orton also made reference to special projects undertaken by the DO, such as one to combat discriminatory attitudes in the employment market by contacting Swedish employers and persuading them that it was in their own interest to give immigrant job applicants a fair chance; awareness raising in Swedish society as a whole by conducting a survey on how immigrants perceived they were discriminated against; by contacting restaurant associations to enlist their assistance to ensure that restaurants did not engage in racial discrimination, and by sponsoring school projects in the framework of essay contests at the secondary level to stimulate a discussion on racial discrimination.

70. Also at the fifth meeting, on 18 February 2000, Mr. Jenö Kaltenbach introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.6) on the action of national institutions in Eastern Europe. He said that whereas in Western Europe racism was related mainly to immigration, in Eastern Europe it was closely associated with the issue of minorities. Traditional minorities played a

much more substantial role in Eastern European societies. The significant exception was the Roma minority: discrimination against them was similar to traditional patterns of racial discrimination in Western Europe. Political parties in Eastern Europe were frequently organized along ethnic lines, he remarked, with such affiliation dominating or significantly influencing the political systems and, in some cases, even relations between States.

71. Mr. Kaltenbach stated that political representation and ethnic autonomy were both fundamental questions. The best solution from the perspective of minorities was the provision of guaranteed mandates in legislation for minority parties. He cited the case of Slovenia where, despite the small number of people belonging to the Italian and the Hungarian minorities, both communities had a guaranteed mandate. Romania was also cited as a good example; there each of the 15 ethnic groups had a guaranteed mandate, and Croatia seven guaranteed minority mandates. In Poland, they did not have a guaranteed mandate, but the representation of minorities was provided for by applying preferential conditions in elections by providing an exemption from the minimum vote requirement imposed on other parties for entry into parliament. He indicated that in other States in Eastern Europe, there was no preferential system at all, but the composition of the population ensured that minority groups were represented.

72. There were two forms of minority self-governance in Eastern European countries: local autonomy and personal autonomy. Under local autonomy minority communities participated in the administration of local public affairs under the general rules of local governments. Personal autonomy was a system that had been established in Hungary, where there was a separate law on the rights of minority communities which entitled them to set up local and national self-governments through separate elections.

73. Mr. Kaltenbach indicated that several types of institutions had been established for minority communities. One such type of institution was the consultative body which involved minority representatives. Another was the ministry or a governmental authority to address minority affairs. A third type of institution was the ombudsperson or national human rights institution. Mr. Kaltenbach indicated that the primary problem with consultative organizations was their lack of power, while the essential problem of specialized ministries or government authorities was their lack of independence. Hence, he was of the conclusion that the ombudsperson solution was the best.

74. The first ombudsperson in Eastern Europe had been elected in Poland. Since then other ombudspersons or like institutions, e.g. human rights centres or commissions, had been established. Normally, such institutions were characterized by general competencies, rather than functions which concentrated on issues of racism and minority issues. In his view, cases relating to minorities or racism were not frequently treated by such institutions, and he therefore concluded that those organizations had more of a potential than a predominant role in dealing with issues of this type.

75. Mr. Kaltenbach noted that an exception to that situation was the Hungarian Parliamentary Commissioner for the Rights of National and Ethnic Minorities, who had been elected by Parliament in 1995 and whose primary mandate was the protection of minority rights. This ombudsperson was entirely independent of the public administration in terms of legal status, budget and personnel. The person had a wide range of powers regarding the inspection of affairs

pertaining to public administration and the practices of Government. The person might undertake mediation, and with the exception of voting, might participate in the work of Parliament, including the initiation of legislation.

76. According to his caseload, the Roma were the most affected group, comprising between 60 to 68 per cent of cases filed. Complaints were directed mainly against local governments, followed by the police and the courts. The recommendations of the ombudsperson were accepted 75 to 80 per cent of the time by governmental institutions.

77. In evaluating the results of his office, Mr. Kaltenbach indicated that a major achievement had been the continuous publicity his office had given to minority issues, and that consequently public attitudes had been affected positively. There had also been a positive evolution in the tone of the media in its reporting on minority issues. He added that the implementation of legal regulation had improved as well, because the public administration was now aware that there was an institution which would intervene in the event of infringement of the law. He also remarked that the contribution of his office to the legislative drafting process in the Hungarian Parliament had also had a positive effect in protecting minority rights.

78. Other achievements he noted were in the employment field, where his office had investigated complaints and found that deficiencies in labour regulations had allowed discrimination against the Roma. His office had made proposals on that subject which had been accepted. His office had also undertaken a survey on “special schools” in the educational system and found that the children, of whom a large percentage were Roma, entering such schools stood a very poor chance in life and that their future was, in practice, unfavourably predetermined by their attendance at such schools. His office had submitted recommendations to the Ministry of Education, most of which had been accepted, including the fundamental premise that education was a strategic issue and one of the preconditions for the integration of the Roma population in Hungarian society.

79. Turning to the more general question of education and minorities, he pointed to two distinct areas: the education of national minorities and the education of the Roma ethnic minority. He noted that, in Romania, Slovakia and Hungary, the law entitled minority groups to establish and maintain cultural and educational institutions, including education in the minority languages at all levels. A child belonging to a minority could receive school education in his or her own native language, a bilingual school or in the language of the majority, according to the wish of the parent. He added that, in Hungary, there existed a special curriculum to assist Roma students. At some universities, information on the history and culture of the Roma had been introduced in the curriculum, and training programmes had been provided for teachers. In Romania, a preferential system facilitating access by Roma students to higher education had been established at one university.

80. Mr. Kaltenbach also underlined that training aimed at the promotion of tolerance for cultural and ethnic diversity was highly desirable, and vital for police and prison officials to eradicate abuses, particularly against members of the Roma community.

81. In the discussion which followed, a representative of the Government of the Netherlands stated that his country was attempting early intervention on issues of racism. Anti-discrimination offices had been established and cooperation to combat racism was being pursued between the Ministry of the Interior, the Ministry of Justice and non-governmental organizations.

82. The representative of the European Commission against Racism and Intolerance said that ombudspersons and national human rights institutions were efficient institutions for sensitizing public opinion and had important educational functions. National institutions generally should work to protect the rights of minorities and migrants, they should provide legal assistance to victims of racial discrimination and should monitor the implementation of anti-discrimination legislation by Governments. He added that it was important for national institutions to keep their independence and that they should be accessible to victims of racism.

### F. Reinforcement of regional and international mechanisms

83. At the sixth meeting, on 18 February 2000, Mr. Régis de Gouttes introduced his paper (HR/GVA/WCR/SEM.1/2000/BP.9). He began his presentation by looking at three major mechanisms for individual complaints concerning racial discrimination:

(a) The mechanism provided under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, which allowed communications to the Committee on the Elimination of Racial Discrimination (CERD). He noted that of the 155 States parties to the Convention, only 29 had accepted the procedure under article 14 which allowed for individual complaints;

(b) The mechanism provided under the first Optional Protocol to the International Covenant on Civil and Political Rights which allowed communications to the Human Rights Committee. He noted that of the 142 States parties to the Covenant, 93 had accepted the Optional Protocol;

(c) The mechanism provided for under the Convention for the Protection of Human Rights and Fundamental Freedoms which allowed individual complaints or petitions to be submitted to the European Court of Human Rights. That procedure was applicable to the 41 States which were members of the Council of Europe.

84. Mr. de Gouttes remarked that only the International Convention on the Elimination of All Forms of Racial Discrimination was entirely devoted to the subject of racial discrimination. The two other international instruments contained only limited provisions regarding racial discrimination, within the wider general principle of non-discrimination.

85. In comparing the International Convention on the Elimination of All Forms of Racial Discrimination and the International Covenant of Civil and Political Rights, Mr. de Gouttes remarked that they were both United Nations international instruments of a universal character, organized and functioning in similar ways. However, CERD worked in the specific field of discrimination on the basis of race, colour, descent, or national or ethnic origin, while the Human Rights Committee had a more general mandate of civil and political rights. He noted that while the Human Rights Committee was limited by the Covenant to civil and political rights generally,

the language of the Convention prohibited racial discrimination not only with respect to civil and political rights, but also with respect to economic, social and cultural rights. He noted that, in practice, the Human Rights Committee had only rarely considered cases involving racial discrimination in its individual complaints procedure, while CERD had to date received 17 individual complaints.

86. Mr. de Gouttes then briefly compared the individual complaints procedures under the International Convention on the Elimination of All Forms of Racial Discrimination with those of the European Convention on Human Rights in the area of racial discrimination. He noted that of the 155 States parties to the former Convention, 34 were also member States of the Council of Europe and therefore parties to the European Convention. Of the 29 States parties to the International Convention on the Elimination of All Forms of Racial Discrimination which had accepted the individual complaints procedure, a large number, 18, were member States of the Council of Europe.

87. In comparing the two international instruments, Mr. de Gouttes found that the scope of the International Convention on the Elimination of All Forms of Racial Discrimination was broader geographically with 155 States parties, and the composition of CERD, the body responsible for monitoring the Convention reflected that geographic diversity. That Convention was broader in substantive terms since it covered civil, political, economic, social and cultural rights, while the European Convention prohibited racial discrimination in the framework of civil and political rights. The European Convention did not establish a general right to protection against racial discrimination, rather it established a principle of non-discrimination on the ground of race in the enjoyment of the rights recognized and protected by the European Convention. Hence, in order to establish a violation of the European Convention, there had to be a violation of the prohibition of racial discrimination in conjunction with the violation of a substantive right protected by the European Convention.

88. Mr. de Gouttes also pointed out that the monitoring bodies of the two international instruments were quite different. The European Convention was monitored chiefly by a supranational judicial body, the European Court of Human Rights, whose decisions were binding and which was a standing body consisting of 41 judges from each of the Council of Europe member States. In contrast, the monitoring body of the International Convention, CERD, was made up of 18 independent experts elected for four-year terms by States parties from among their nationals, who served in their personal capacity. In contrast to the judicial nature of the European Court of Human Rights, CERD was more a political body in its organization, composition and functions.

89. Concerning remedies, Mr. de Gouttes noted that the European Convention provided for the award of financial damages against a State and for "just satisfaction" to be awarded to the injured party and that those remedies of the European Court of Human Rights were binding. On the other hand, the power of CERD was limited to making recommendations and suggestions to the State party, and publishing in its annual report to the General Assembly a summary of the communication together with those recommendations and suggestions.

90. In the consideration of individual complaints, Mr. de Gouttes was of the view that CERD allowed itself more discretion than the European Court of Human Rights. The European Court

had found a violation of racial discrimination in only a small number of cases, notably concerning the right to respect for family life, the right to respect for property, the right to education and gender equality. He considered that one reason why violations of the European Convention did not result in more findings of racial discrimination was that the provision prohibiting racial discrimination always had to be established in conjunction with the violation of a substantive right, and the violation of the substantive right might be sufficient in itself for a finding in favour of the petitioner. He also noted that there might also be divergences between the European Court of Human Rights and CERD on some substantive issues concerning racial discrimination

91. In concluding, Mr. de Gouttes said that it was important to continue with efforts to secure universal recognition of the optional individual complaints mechanism under the International Convention. It was also important that the general public be better informed about the individual complaints procedure under that Convention and that efforts in that regard should be requested of States parties, anti-racist non-governmental organizations, lawyers and legal associations. Lastly, he felt it useful to repeat that the procedures for individual complaints to CERD and the European Court of Human Rights were complementary.

## III. RECOMMENDATIONS AND CLOSING OF THE SEMINAR

92. At its sixth meeting, on 18 February 2000, a preliminary summary of recommendations was orally presented by Ms. Virginia Dandan, Chairperson/Rapporteur. It was agreed that she would take into consideration the contributions from other expert colleagues and prepare a final set of recommendations to be attached to the report on the seminar to the Preparatory Committee at its first session. The final set of recommendations is contained in appendix I.

93. Ms. Mary Robinson, United Nations High Commissioner for Human Rights, addressed the seminar at its closure on 18 February 2000. She welcomed the fact that the seminar had given attention to particularly vulnerable groups, who were frequently the most marginalized, the poorest, the least educated and who often had the least faith in and access to official recourse procedures. She also said she was pleased that recourse procedures for non-citizens, migrants, asylum-seekers and refugees, indigenous peoples, aliens, children and young people and women had also been examined. With regard to the Internet, she noted that opinions had sometimes differed during the seminar on approaches to the subject, but that it was important that there had been agreement that education was an essential tool in combating racism and hate activities transmitted on the Internet and by other means. With regard to the discussion at the seminar of ombudspersons and national institutions, her Office was strongly committed to continuing its work for the establishment of such institutions where they did not exist, and for their reinforcement where they already existed. She added that those institutions were particularly effective when they were independent and had adequate resources and powers to assist victims of racial discrimination.

## Appendix I

## RECOMMENDATIONS OF THE SEMINAR

### Introduction

1. In recent years the world has witnessed the upsurge of racism, racial discrimination, xenophobia and intolerance. This has given rise to the necessity for the international community to be more vigilant and to use the international instruments at its disposal to curb these evils which are emerging in all countries. There is an urgent need for Governments of all States to recognize and understand fully the serious consequences of this increase in racial discrimination, and to express their political determination in clear and precise terms in support of the efforts of the international community to combat discriminatory practices. In this regard, resolute and effective cooperation between Governments constitutes a sine qua non for the success of the international struggle against racial discrimination.

2. In the efforts and activities to combat racism, racial discrimination, xenophobia and related intolerance, the International Convention on the Elimination of All Forms of Racial Discrimination, the work of the Committee on the Elimination of Racial Discrimination (CERD), as its monitoring body, and the work of the Special Rapporteur on contemporary forms of racism should take central place.

3. In all policies and measures to combat racism and racial discrimination, the perspective of the victim must be the guiding principle, with particular attention and concern for women and children, who are often victims of multiple forms of discrimination.

### Point 1: Racial discrimination in economic, social and cultural life

4. International human rights instruments contain extensive requirements for the availability of effective remedies. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance should call on all States to become parties to all these instruments and to implement them in good faith in their national legal and administrative order.

5. International instruments such as the International Covenants on Human Rights, the ILO Discrimination Convention (Employment and Occupation), the UNESCO Convention against Discrimination in Education and, most prominently, the International Convention on the Elimination of All Forms of Racial Discrimination enjoin all States to take all necessary measures to combat racial discrimination in civil, political, economic, social and cultural life and to ensure that all practices which have the effect of creating or perpetuating racial discrimination are brought to an end. Accordingly, seminars should be organized at the regional and sub-regional level to promote those measures.

6. For the purposes of effectively combating racism, racial discrimination, xenophobia and related intolerance in the economic, social and cultural fields, both in the public and in the private sector, it is recommended that States introduce general and comprehensive

anti-discrimination legislation which provides protection against discrimination on the basis of race, colour, national or ethnic origin, religion and gender, and also provides remedial relief in the form of civil damages.

7. Racial discrimination in economic, social and cultural life is often practised by private institutions, groups and individuals, particularly with regard to the enjoyment of such rights as the right to work and access to employment, the right to housing, the right to health, the right to social security, the right to education and the right to access to places and services intended for the use of the general public. It is therefore essential that States bring to an end racial discrimination by any person, group or organization as provided for in article 2.1 (d) of the International Convention on the Elimination of All Forms of Racial Discrimination. The need for measures to this effect is even more pressing in situations where the role of the State is declining and privatization is tending to affect adversely the realization of economic, social and cultural rights without discrimination on the basis of race, colour, national or ethnic origin, religion and gender.

8. The United Nations should prepare and publicize a systematic collection of national anti-discrimination legislation, in particular with a view to informing those in authority and the public at large of legal means to combat racial discrimination in private relationships, including any available legal and other remedies.

9. At the national level, Governments should undertake public information campaigns on the rights and procedures relating to remedies available to individuals or groups who are victims of racial discrimination, especially the most vulnerable. The objective of these campaigns is to ensure and facilitate access to recourse procedures of varied natures - criminal, civil, administrative or mediation procedures.

10. Public authorities and private institutions should widely disseminate information regarding economic, social and cultural rights as rights to be enjoyed by everyone, without discrimination on the basis of race, colour, national or ethnic origin, in accordance with article 5 of the International Convention on the Elimination of All Forms of Racial Discrimination. In this respect, the indivisibility and the interdependence of economic, social and cultural rights and of civil and political rights should always be kept in mind.

11. The various remedies available to victims of racial discrimination in economic, social and cultural life should include recourse to national institutions, which can play an important role in disseminating information about measures of protection against discrimination and in advising victims of remedies available to them; to law enforcement officials who are responsible for carrying out measures for curbing discrimination and protecting the victims; to prompt and effective action on the part of authorities responsible for the administration of justice; to educational activities through which racial prejudice or practices can be curbed; and to the enduring activities of the media which should promote understanding, tolerance and the basic principles of non-discrimination.

12. Remedies must be available against discrimination in the area of economic, social and cultural fields as well as in the civil and political fields. Such remedies must include procedural mechanisms of recourse against decisions, which constitute or may lead to violations, and of material reparations whenever violations have occurred.

13. When permissible derogations are made in times of emergency threatening the life of the nation, effective remedies must continue to exist against violations of non-derogable rights.

14. When abnormal situations occur where the rule of law breaks down at the national level, it is of particular importance for the international community to take measures to provide, wherever possible, material remedies for the victims.

15. The crucial role of education, in particular human rights education, in the prevention and eradication of all forms of intolerance and discrimination should be underlined. In this regard, it is important to reinforce the anti-discrimination component of the curricula and to improve educational materials on human rights, in order to shape attitudes and behavioural patterns based on the principles of non-discrimination, mutual respect and tolerance.

16. In recognition of the right to education as a basic human right, without which the realization of all other rights is impeded, special efforts are needed to prevent and eliminate discrimination in education and to ensure access to education at all levels without any exclusion, limitation or preference on the basis of race, colour, sex, language, religion, national or ethnic origin or other grounds.

### Point 2: Racial discrimination against vulnerable groups: an examination of recourse procedures of non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous people

17. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance should give priority attention to the need for effective remedies for victims of violations among the most vulnerable groups, taking into account the special difficulties these groups face.

18. The enjoyment of economic, social, cultural, civil and political rights should be ensured, in law and in practice, for persons belonging to vulnerable groups, including indigenous peoples and those who suffer discrimination because of structural reasons, for example, descendants of slaves, the Roma, etc. Furthermore, countries that take measures to improve the lives of such vulnerable groups should be provided financial and technical assistance so that they can continue their efforts.

19. The situation of victims of racial discrimination among vulnerable groups such as non-nationals, migrants, asylum-seekers, refugees, minorities and indigenous populations should be given sufficient emphasis in order to raise public awareness of their plight.

20. Indigenous peoples, minorities, migrants, refugees, asylum-seekers and other non-nationals face special problems more often than other victims of violations do. For this reason, special efforts must be made to provide remedies which can be applied more effectively in relation to their particular situation and their special rights.

21. The establishment of national institutions against ethnic discrimination, covering also migrants and other non-nationals, would be an effective mechanism to provide legal aid as well as non-judicial remedies for the victims.

22. Maximum diligence is required to ensure that members of law enforcement agencies are free from ethnic or racial bias against vulnerable groups, and that they perform their duties with impartiality and with sensitivity for the special problems these groups face.

23. Special efforts should be made to include in human rights education information regarding the availability of special remedies which apply effectively to the particular situation of vulnerable groups and which are meaningful with regard to their special rights.

24. Effective remedies should be made available for violations of the collective as well as the individual rights of indigenous peoples, in line with the provisions contained in ILO Convention (No. 69) on Tribal and Indigenous Peoples in independent countries.

25. Similarly, remedies should be made available to members of national or ethnic, religious or linguistic minorities, to address violations of their collective as well as their individual rights.

26. Indigenous peoples and minorities should participate both in the establishment and in the operation of remedial mechanisms for their special protection.

27. States are called upon to adopt special measures for indigenous peoples and minorities, who should enjoy equality in law and in fact, as set out in article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, and remedies should also be available in cases where such special measures are not implemented.

28. Governments are requested to provide reception and information facilities for migrant workers, to implement policies relating to training, health and housing, and to undertake educational and cultural development programmes for them. Existing remedies for migrant workers at the international and regional levels should be made more accessible to them. Judicial remedies should be developed and enforced (art. 83, Migrant Workers Convention) and free legal aid must be provided for migrant workers under the same conditions provided for nationals (art. 19, Social Charter of the Council of Europe).

29. Women and children become vulnerable to trafficking because of social inequality and the vast economic disparity within States and between rich and poor States, even though considerable efforts have gone into standard-setting to combat this evil. States should undertake to provide refuge and protection for victims of sexual exploitation, including prostitution and trafficking, and to repatriate those who desire to be repatriated. Remedies need to be developed so that such persons will be able to reveal and bring to light without any risk to themselves, the exploitative circumstances behind their situation.

30. Special attention should be given to violations of refugees in refugee camps and detention centres. In these places, women and girls who are bereft of effective remedies for their protection often face particular problems. Under these circumstances, women and girls are often subjected to sexual or other assaults.

31. Asylum-seekers face increasing problems because of stringent non-admission policies in most developed countries. In addition, because of the imposition of stricter border controls by neighbouring States to which refugees may alternatively seek to escape, their right to asylum becomes even further restricted. Remedies should be made available for such persons who are unable to make use of their right to seek asylum.

32. Effective remedies should be established for the protection of non-national residents, who often suffer discrimination in obtaining access to citizenship. International standards should be developed to ensure equality in access and maintenance of citizenship, in line with recommendations made by the International Law Commission and contained also in the European Convention on Nationality of 1997.

33. Effective remedies should be made available for asylum-seekers, who are often victims of unnecessary and prolonged detention and who suffer unacceptable conditions while they are detained.

34. The lack of remedies for non-nationals who are imprisoned in developed countries and whose number has steeply increased is far more obvious than for those who are not in those circumstances. Visible aliens are more easily singled out for suspicion and may often have fewer resources to defend themselves against unjustified prosecution. Continuous social discrimination and degrading treatment generates anger and hatred, which eventually lead to criminal acts. The behaviour of public authorities and law enforcement agencies is in itself an effective crime-preventing measure and demonstrates the necessity for establishing effective remedies so that public authorities do not behave in a discriminatory and derogatory way.

35. An appeal is issued for international cooperation, which could either be bilateral or multilateral, so that all States which make a request, particularly those in transition to democracy, can receive information and training on recourse procedures that could be put in place and made available to victims of racial discrimination.

## Point 3: Racism on the Internet: legal and technical questions

36. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance should reaffirm the principle of the applicability of international human rights instruments with regard to racist acts on the Internet, in particular the International Convention on the Elimination of All Forms of Racial Discrimination.

37. Governments are called upon to take adequate measures, including legislation, to ensure that the Internet is not used as a means of disseminating racist ideas and illegal behaviour of a racist character, while equally ensuring that adequate safeguards are adopted to protect freedom of expression.

38. Public authorities, schools and communities should strengthen efforts to provide education and information aimed at combating the dissemination of racist ideas, which are an infringement of human dignity, equality and freedom.

39. Regional preparatory conferences for the World Conference should explore and address the question of how to use the Internet to counteract racism and to prevent its use by racist hate groups for propagating racial hatred.

40. The recommendation adopted by the seminar on the role of the Internet held in Geneva in 1997 is reaffirmed, according to which the States Members of the United Nations should continue cooperation and establish international juridical measures in compliance with their obligations under international law, especially the International Convention on the Elimination of All Forms of Racial Discrimination, to prohibit racism on the Internet while respecting individual rights, such as freedom of speech.

### Point 4: Common problems linked to all remedies available to victims of racial discrimination

41. It is essential that effective remedies, judicial and otherwise, be available to victims of racial discrimination, in fulfilment of the requirements of international human rights norms. More emphasis must be given to making remedies and recourse procedures more widely known.

42. In order to enhance the effectiveness of recourse procedures, such processes should be easily accessible, expeditious and not unduly complicated. Legal aid and other forms of assistance should be provided.

43. Victims of racial discrimination are entitled to reparation in its different forms, such as restitution, compensation, rehabilitation, satisfaction and guarantees of non-repetition. Monetary and non-monetary forms of reparation are equally important in rendering justice to victims of racial discrimination. Non-monetary forms of reparation include measures such as verification of the facts and their public disclosure; official declarations or judicial decisions that restore dignity and rebuild reputation; acknowledgment of the facts and acceptance of responsibility; and the commemoration and the payment of tribute to the victims.

44. The highest priority should be given to addressing the virtual absence of effective remedies for the most marginalized victims, notably victims of trafficking, undocumented workers, victims of entrenched and persistent discrimination such as indigenous peoples, the Roma and the descendants of slaves. International instruments and other national and international acts must urgently address these issues by taking legal and other measures to ensure protection and assistance, to provide reparation, including civil damages and rehabilitation of the victims and survivors.

45. Special measures should be taken, in accordance with article 2.2 of the International Convention on the Elimination of All Forms of Racial Discrimination, to ensure the development and protection of the most disadvantaged racial groups or of persons belonging to these groups, for the purpose of guaranteeing for them the full and equal enjoyment of human rights and fundamental freedoms.

46. There is a need to make the justice and police system, as well as other public officials responsible for application of the law, more sensitive to the plight of victims of racial discrimination and to issues related to racism, racial discrimination, xenophobia and related intolerance. For this purpose, high priority must be given to human rights education and training for law enforcement officials, especially the police and members of the judiciary. In this regard, sanctions should be applied to public officials charged with applying the law who do so in a discriminatory manner, including singling out particular ethnic groups in the population.

47. Victims of racial discrimination and the general public should be better informed of their rights and of recourse procedures available, including those available at the international level. Such information should include information concerning the role of the State and its institutions, NGOs and the legal community.

48. Closer cooperation should be promoted between law enforcement officials, the judiciary and the public at the community level in order to facilitate understanding on issues relating to racial discrimination.

49. National legislation prohibiting racial discrimination, as well as related judicial practices, should be reconsidered with regard to the level of proof necessary to establish what constitutes acts of racial discrimination, often difficult to establish in certain countries. In allegations of racial discrimination, the onus of proof must rest with the respondent to rebut the allegation made by the victim of racism.

50. While action against racism will principally be determined in terms of the rules of civil procedure, in the event of any action punishable under criminal law, evidence of racist motivations/intention should be considered as an aggravating circumstance.

### Point 5: Action of national institutions: examples of good practices

51. The World Conference on Racism, Racial Discrimination, Xenophobia and Related Intolerance should encourage States to establish independent national human rights institutions with adequate resources to carry out their functions. States should also be encouraged to establish special institutions or to enable human rights institutions to have a special mandate to combat racism and racial discrimination.

52. The World Conference should encourage States to support actively the activities in this field of the High Commissioner for Human Rights and similar activities carried out by regional bodies.

53. National institutions should monitor the implementation of national legislation prohibiting racial discrimination and report to Parliament.

54. It is recommended that legislation give a role to national institutions to undertake alternative methods of resolution of disputes by conciliation and mediation and, where necessary, to represent victims in the courts or before other bodies.

55. National institutions should undertake educational programmes to raise public awareness of racism and to disseminate information on the regional and international remedies available to victims of racial discrimination. Training should also be provided to judges and law enforcement officers concerning applicable international human rights instruments relating to racism, and that training should include guidance on the practical implementation of such provisions in their daily work.

56. While it is recognized that national human rights institutions play an important role as watchdogs, it should be stressed that critical and constructive NGOs play an important role as watchdogs in relation to the national human rights institutions as well.

57. National institutions from the five geographical regions should be represented and should actively participate in the preparations for the World Conference and in the World Conference itself.

### Point 6: Reinforcement of regional and international mechanisms

58. Efforts should be continued in order to extend and to achieve universal recognition of the individual complaints procedure that is available under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination. In this regard a new appeal should be made to States parties to persuade them to make the optional declaration under the Convention.

59. Increased efforts should be undertaken to inform the public of the existence of the complaints mechanism under article 14 of the International Convention on the Elimination of All Forms of Racial Discrimination, with the assistance of States parties, NGOs and bar associations.

60. It is recommended that the usefulness of the complementary nature of the complaints procedures of CERD and of the European Court of Human Rights be affirmed, so that victims of racial discrimination can have at their disposal a wider choice of international recourse procedures.

61. It is recommended that CERD should institute a follow-up procedure with respect to individual communications, similar to the procedure which exists for the Human Rights Committee. It is also recommended that the CERD secretariat be given additional resources for the processing of an increasing number of individual complaints.

62. International and regional bodies are encouraged to collect data from national human rights institutions regarding specific countries and to disseminate directly to the national human rights institutions, decisions, statements and other relevant information of direct bearing on the country in question.

63. Better coordination should be established between the various regional and international mechanisms that provide remedies to victims of racial discrimination.

64. Efforts should be undertaken to promote a better knowledge of the activities and the jurisprudence of regional and international mechanisms that are available for victims of racial discrimination.

## Appendix II

## LIST OF PARTICIPANTS

### Experts

Mr. Luis Valencia Rodriguez, member, Committee on the Elimination of Racial Discrimination;

Ms. Virginia Dandan, Chairperson, Committee on Economic, Social and Cultural Rights;

Mr. Asbjørn Eide, member, Sub-Commission on the Promotion and Protection of Human Rights;

Mr. David Rosenthal, international lawyer;

Mr. Mark Potok, Southern Poverty Law Center;

Mr. Theodor van Boven, law professor;

Mr. Barney Pityana, Chairperson, South African Human Rights Commission;

Mr. Jenö Kaltenback, Ombudsman and Parliamentary Commissioner for National and Ethnic Minority Rights;

Mr. Frank Orton, former Ombudsman of Sweden and former chairperson of the European Commission against Racism and Related Intolerance;

Mr. Régis de Gouttes, member, Committee on the Elimination of Racial Discrimination;

Mr. Maurice Glèlè Ahanhanzo, Special Rapporteur on contemporary forms of racism, racial discrimination, xenophobia and related intolerance;

Mr. Abdel Fatah Amor, Special Rapporteur on religious intolerance.

### States Members of the United Nations represented by observers

Angola, Albania, Argentina, Armenia, Austria, Bangladesh, Belgium, Brazil, Brunei Darussalam, Bulgaria, Burundi, Canada, China, Costa Rica, Côte d'Ivoire, Croatia, Cyprus, Czech Republic, Denmark, Egypt, Eritrea, Ethiopia, Finland, France, Germany, Guatemala, Haiti, Holy See, Hungary, India, Iran (Islamic Republic of), Iraq, Ireland, Israel, Kuwait, Latvia, Libyan Arab Jamahiriya, Malaysia, Monaco, Morocco, Mozambique, Nepal, Netherlands, Pakistan, Philippines, Poland, Portugal, Qatar, Russian Federation, Rwanda, Slovakia, Slovenia, Spain, South Africa, Sri Lanka, Sudan, Sweden, Switzerland, Thailand, Tunisia, Turkey, United States, United Kingdom, Uruguay, Zimbabwe.

## United Nations bodies, specialized agencies and intergovernmental organizations

Office of the United Nations High Commissioner for Refugees
International Labour Organization
United Nations Educational, Scientific and Cultural Organization
Council of Europe
European Commission against Racism and Intolerance
International Organization for Migration

## Non-governmental organizations

Amnesty International, Agencia Latinoamericana de Información, Asian Students Association, Association internationale des juristes, Association of World Citizens, Association for World Education, Baha'i International Community, Board Ethnic Equality, Caritas Internationalis, Centre for Organization, Research and Education, Commission on Equal Treatment, Confédération international des syndicats libres, Commission for Racial Equality, Earthjustice Legal Defense Fund, Espace Afroaméricain, European Union of Public Relations, Fédération international des ligues des droits de l'homme, Federal Union of European Nationalities, Foundation for Aboriginal and Islander Research Action, France Libertés: Fondation Danielle Mitterrand, Franciscans International, International Association against Torture, International Association of Schools as Instruments of Peace, International Council of Jewish Women, International Commission of Jurists, International League for Human Rights, International Movement against All Forms of Discrimination and Racism, International Police Association, International Possibilities Unlimited, International Save the Children Alliance, International Service for Human Rights, International Young Catholic Students , International Organization of Indigenous Resource Development, Internet Centre and Anti-racism Europe, Magenta Foundation, National Aboriginal and Islander Legal Services, Na Koa Ikaika o Kalahui Hawai, Nillei Japanese Journal, Nord-sud XXI, Nord-sud, Penal Reform International, Russian Association of Indigenous Peoples of the North, Save the Children, Searchlight, Simon Wiesenthal Center, Te Kawau Maro, United Nations Watch, Woman's International League for Peace and Freedom, World Federation of Democratic Youth, World Federation of United Nations Associations, World Jewish Congress, World Union of Catholic Women, Worldview International Foundation, World Vision International.

## National institutions

Parliamentary Commissioner for the Rights of National and Ethnic Minorities (Hungary)
Danish Parliamentary Ombudsman
Defensor del Pueblo (Spain)
Human Rights Ombudsman of Slovenia
Provedoria de Justicia (Portugal)
Equal Treatment Commission (The Netherlands)

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